



**AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

**BALLENA BAY TOWNHOUSE ASSOCIATION NUMBER 1**

**RECITALS**

R1. Whereas, Ballena Bay Townhouse Association Number 1 is the successor to Pan-Pacific Development Company, which as Declarant, executed a Declaration of Covenants, Conditions and Restrictions, recorded on February 10, 1969, under Recorder's Serial Number 15096 in the Official Records of the County of Alameda, State of California and a Supplementary Declaration of Covenants, Conditions and Restrictions recorded on April 10, 1970 under Recorder's Serial Number 70-36820 in the Official Records of the County of Alameda, State of California (both documents are referred to herein as "Original Declarations"); and

R2. Whereas, the following amendment to the Original Declarations were adopted and recorded as follows: Amendment to Supplementary Declaration of Covenants, Conditions And Restrictions, recorded on October 5, 1982, as Instrument No. 151526, in the Official Records of the County of Alameda, State of California; and

R3. Whereas, the above-referenced Original Declarations and the amendments thereto established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of 80 Lots and various common areas located in the City of Alameda, County of Alameda, State of California, and more particularly described in Exhibit A hereto: and

R4. Whereas, the Members of Ballena Bay Townhouse Association Number 1, constituting at least seventy-five percent (75%) of the total voting power of Ballena Bay Townhouse Association Number 1, desire to amend, modify and change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in the parcels of real property Described in Exhibit A hereto;

R5. Therefore, the Members of Ballena Bay Townhouse Association Number 1, constituting at least seventy-five percent (75%) of the total voting power of Ballena Bay Townhouse Association Number 1, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the above described Original Declarations and all amendments thereto (whether identified above or not) be and are hereby AMENDED AND RESTATED in their entirety. In the place and stead of the limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the above described declarations and amendments thereto, the Members hereby adopt and



substitute this Amended and Restated Declaration of Covenants, Conditions & Restrictions of Ballena Bay Townhouse Association Number 1; and

R6. It is further hereby declared that all of the real property described herein constitutes a "Planned Development" within the meaning of Section 1351(k) of the California Civil Code; and

R7. It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions & Restrictions, all of which is declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof; and

R8. It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Section 1354 of the California Civil Code and shall constitute covenants that shall run with the real property and shall be binding upon and for the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

R9. It is further hereby declared that each Owner, by acceptance of a deed to a Lot, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration of Covenants, Conditions and Restrictions that subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the Ballena Bay Townhouse Association Number 1 Development, either individually or as a class, of the Ballena Bay Townhouse Association Number 1 or of the public generally, regardless of whether the deed refers specifically to this Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

#### **ARTICLE I: DEFINITIONS**

**Section 1.1 "Articles"** means the Articles of Incorporation of Ballena Bay Townhouse Association Number 1, which are filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

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



**Section 1.3 "Association"** means Ballena Bay Townhouse Association Number 1, a California nonprofit mutual benefit corporation, its successors and assigns. Ballena Bay Townhouse Association Number 1 is an "Association" as defined in California Civil Code Section 1351(a).

**Section 1.4 "Association Manager"** means the person or entity, if any, retained by the Association to manage its affairs, as authorized in the Bylaws.

**Section 1.5 "Association Rules"** means the rules, regulations and policies adopted by the Board of Directors of the Association pursuant to this Declaration, as the same may be in effect from time to time.

**Section 1.6 "Board of Directors" or "Board"** means the Board of Directors or the governing body of the Association.

**Section 1.7 "Building"** means any structure located within the Development that is used as a Residence, or for the storage or placement of property and/or equipment, or for meetings or gatherings of Members and their guests.

**Section 1.8 "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 1.9 "Common Area"** means all the real property owned by the Association for the common use and enjoyment of the Owners and their families, tenants and guests. It consists of Lot A, Blocks 1 and 3, Tract 3011, and Lot A, Blocks 2 and 3, Tract 3105, as described in the Maps.

**Section 1.10 "Common Expense"** means the actual, estimated, or expected costs, charges, or other financial liabilities of the Association, including, without limitation: (a) all costs or charges incurred by or on behalf of the Association for the management, maintenance, administration, operation, repairs, additions, alterations or reconstruction of Common Area, Common Facilities, or any portion of the Lots for which the Association has maintenance or repair obligations; (b) all costs or charges reasonably incurred to procure insurance for the protection of the Association and its Board; (c) any amounts reasonably necessary for reserves to maintain, repair or replace the Common Area or Common Facilities, any portion of the Lots for which the Association has maintenance or repair responsibility or to cover unpaid (delinquent) assessments; and (d) any other costs or charges necessary for the Board to perform its functions and fulfill its responsibilities under the Governing Documents.

**Section 1.11 "Common Facilities"** means trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes and/or lines, sprinkler and/or irrigation systems, lighting fixtures, buildings, structures, boat docks, pilings, ramps, landings, landing stairs, wave maze, floats and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and intended for the use and enjoyment of the Members.



**Section 1.12 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions of Ballena Bay Townhouse Association Number 1, recorded in the Office of the County Recorder of Alameda County, California as it may be amended from time to time.

**Section 1.13 "Development"** means all real property and the Improvements thereon that are located within the geographical area to which this Declaration applies, as described in the Recitals above, and that are intended to create a Planned Development as defined in California Civil Code Section 1351(k).

**Section 1.14 "Director"** means a member of the Association's board of directors.

**Section 1.15 "Eligible First Mortgagee"** means a First Mortgagee who has sent a written request for notice to the Association, stating its name and address and the Lot number or address of the Lot on which it has the Mortgage.

**Section 1.16 "Exclusive Use Common Area"** means those portions of the Common Area designated for the exclusive use and enjoyment of the Owners or residents of a specific Lot. See Section 2.2(c) below.

**Section 1.17 "Family"** means two or more persons who live together and maintain a common household in a Lot whether or not they are all related to each other by birth, marriage or legal adoption.

**Section 1.18 "First Mortgage"** means a mortgage having priority over all other Mortgages.

**Section 1.19 "First Mortgagee"** means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage that constitutes an encumbrance upon one or more Lots first in priority of lien over all other encumbrances upon said Lot(s) securing payment of money, other than this Declaration and liens for real estate taxes and assessments.

**Section 1.20 "General Common Area"** means all of the Common Area within the Development not designated as Exclusive Use Common Area.

**Section 1.21 "Governing Documents"** is a collective term that means and refers to this Declaration and to the Association's Articles, Bylaws, Association Rules and the policies and resolutions adopted by the Board and distributed to the Members.

**Section 1.22 "Improvement"** means an addition to or alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any Building, outbuilding, structure, shed, driveway, Parking Space or parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, docks, pilings, ramps, landings, landing stairs,



wave maze, floats and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects that are either (a) restricted to the interior of a Residence or (b) are not visible from adjacent Common Area or Lots, so long as such projects do not involve modifications to load bearing walls or the structural framing of a Building, and do not interfere with other Members' use and enjoyment of their property.

**Section 1.23 "Lien"** means any lien, whether voluntary or involuntary.

**Section 1.24 "Lot"** means any parcel of real property designated by a number on the Maps of the Development, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

**Section 1.25 "Maintenance"** means the exercise of reasonable care to keep Buildings, landscaping, lighting, signage, fencing and other Common Area(s), Common Facilities, Improvements and/or real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall include the exercise of regular fertilization, irrigation or other garden management practices necessary to promote a healthy and weed free environment.

**Section 1.26 "Maps"** mean the maps of Tracts 3011 and 3105 as described in Exhibit A hereto and as filed in the offices of the Alameda County Recorder.

**Section 1.27 "Member"** means each person (or entity) who is named as an Owner on the recorded grant deed (or other valid title document) for any Lot within the Development. However persons (or entities) who hold an interest in a Lot merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders) are not Owners or Members. When more than one person is an Owner of a Lot, all such persons shall be Members. However in no event shall more than one vote be cast with respect to any Lot.

**Section 1.28 "Mortgage"** means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably.

**Section 1.29 "Mortgagee"** shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

**Section 1.30 "Mortgage Lien"** means the lien or charge or equivalent security interest of any mortgage or deed of trust.

**Section 1.31 "Mortgagor"** shall refer to the trustor under a deed of trust, as well as a mortgagee.



**Section 1.32 "Owner"** means any person, firm, corporation or other entity that owns a fee simple interest in any Lot. However the term Owner shall not include persons (or entities) who hold an interest in a Lot merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders).

**Section 1.33 "Owner of Record"** includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the Alameda County Recorder. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or co-trustees of such trust.

**Section 1.34 "Parking Area"** means those areas within the Development designated for the parking of motor vehicles, including driveways and carports, but not including enclosed garages.

**Section 1.35 "Private Streets"** means the Private Streets shown on the Maps as Cola Ballena and Tideway Drive and all improvements thereon.

**Section 1.36 "Regular Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 5.2 hereof.

**Section 1.37 "Residence"** means a private residential dwelling constructed on any Lot in the Development.

**Section 1.38 "Special Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 5.3 hereof.

**Section 1.39 "Special Individual Assessment"** means an Assessment made against an Owner and/or his or her Lot in accordance with Section 5.4 hereof.

## **ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS**

### **Section 2.1 Elements of Separate Interest**

Ownership of each separate interest within the Development includes:

- (a) Lot A separate Lot as defined, depicted and described herein and identified by number on the Maps.
- (b) Nonexclusive Easements. Nonexclusive easements appurtenant to the Lot for the use and enjoyment of the Common Area and as more particularly described in Section 2.2 (a).
- (c) Exclusive Easements. The right to use and enjoyment of Exclusive Use Common Area as described in Section 2.2(c).



(d) All Interests Subject to Governing Documents. All of the above interests in real property shall be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in this Declaration, the Articles, the Bylaws, and the Association Rules.

### **Section 2.2 Owners' Right to Use and Enjoy Common Area**

Subject to the provisions of this Declaration, the General Common Area shall be held and maintained for the use and enjoyment of the Members of the Association, their families, tenants, lessees, resident contract purchasers and/or guests as provided in the Governing Documents. There shall be no use of the General Common Area except by the above specified persons. (See Section 2.4, below, regarding use by non-members).

(a) Nonexclusive Easements. Every Owner (and Owner's Family, resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the General Common Area, including ingress and egress to and from the Owner's Lot and Exclusive Use Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the rights and restrictions set forth in this Section.

(b) Limitations on Nonexclusive Easements. The Owners' nonexclusive easements for use and enjoyment of the General Common Area as described above are subject to the following limitations and restrictions:

(i) The right of the Association to adopt Association Rules as provided in Section 4.6(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or of any provision of the Governing Documents by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 12.6 hereof.

(ii) The right of the Association, in accordance with this Declaration, and/or the Association's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 5.3 hereof.

(iii) The right of the Association to dedicate or transfer all or any part of the General Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be



permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form. The Association shall, without a vote of the Members, have the right to grant licenses and or right of entry to the General Common Area and/or easements through the General Common Area for purposes consistent with the purposes of the Association that do not interfere with the use and enjoyment of the Common Area by the Members.

(iv) The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

(v) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Lot in conjunction with other Lots within the Development. The Owner of each Lot served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection shall be entitled to the full use and enjoyment of such portions of said connections as service Owners' Lot.

(vi) The right of the Association to charge reasonable admission, use and/or other fees for the use of the General Common Area or any portion thereof.

(c) Exclusive Use Common Area. Exclusive Use Common Area, as defined in California Civil Code Section 1351(i), shall include one mooring slip in the common area dock system, private driveways and sidewalks serving a single Lot and any other portions of the Common Area specifically identified on the Maps, conveyed or assigned as exclusive easements appurtenant to a particular Lot. These portions of the Common Area, referred to as "Exclusive Use Common Area," are subject to exclusive easements in favor of the Lot to which they are assigned or conveyed. Such exclusive easements shall be appurtenant to those designated Lots and shall be used and enjoyed exclusively by the Owner of such Lot and not by others except by the Owner's invitation. The exclusive easements appurtenant to a Lot shall not unreasonably interfere

with exclusive easements appurtenant to another Lot. Except as provided in this Declaration, no one may prevent access by an Owner to an Exclusive Use Common Area appurtenant to that Owner's Lot.

The Association may promulgate rules and regulations limiting and defining the rights of Owners to use Exclusive Use Common Areas. The Association shall have and enjoy rights of entry on, over, under, across and through the Exclusive Use Common Areas to perform its maintenance and repair obligations under the Governing Documents.

### **Section 2.3 Persons Subject to Governing Documents**





All present and future Owners, tenants, lessees, contract purchasers and/or occupants of Lots within the Development (on behalf of themselves, their Family, guests, tenants, invitees, agents, servants, employees, licensees and/or any other persons that might use the facilities of the Planned Development Project in any manner, etc.) shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.).

#### **Section 2.4 Delegation of Use**

(a) Delegation of Use and Membership Rights and the Leasing or Sale of Lots.

(i) Assignment of Rights to Family Members. Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's Family residing at the Development.

(ii) Use by Invitees and Guests. The invitees and guests of a Member shall have the right to use and enjoy the Common Areas and Common Facilities within the Development. Any such guest or invitee shall be subject to the same obligations imposed on the Member to observe the Rules, restrictions, and regulations of the Association as set forth in the Governing Documents. The Member shall be responsible for any violation of the Governing Documents by his or her invitees or guests and for any damage to Common Area or Common Facilities caused by such persons.

(iii) Assignment of Rights to Tenants/Lessees. Any Member who has leased or rented the Member's Lot to another person or persons shall in all events be deemed to have delegated to his or her tenants all rights of use and enjoyment of the Common Area provided, however, that such Member may retain use of the appurtenant boat slip so long as such reservation of rights is set forth in the lease agreement.

(Any such lease or rental shall be subject to any additional restrictions, limitations and/or requirements set forth in this Declaration or the other Governing Documents.).

(iv) Assignment of Rights to Contract Purchasers. Further, any Member who has sold that Member's Lot to a contract purchaser shall be entitled to delegate to such contract purchaser Member's rights and privileges of membership in the Association. Such Member shall be deemed to have delegated all rights to use and enjoyment of the Common Area to a contract purchaser who has assumed occupancy of said Lot. No delegation of any membership rights or privileges to a non-resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.7, below. Notwithstanding any delegation, until fee title to the Lot has been transferred of record, a contract seller shall remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Member's Lot/Residence.



(b) Association Rules. The right of any person to use and enjoy the Association Common Area and Common Facilities shall at all times be subject to the regulations, policies, limitations, and restrictions set forth in the Association Rules, in this Declaration, and in the other Governing Documents.

### **Section 2.5 Obligations of Owners**

Owners of Lots within the Development shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants & Contract Purchasers. Within ten (10) days of the execution of any agreement for sale of an Owner's Lot or any other transaction that will result in a change in the record ownership of the Lot, and/or within five (5) days of the execution of any lease of a Lot, the Lot Owner shall notify the Association in writing of the name, telephone numbers (home and office) and mailing address of the buyers, transferees or lessees, the name, address of any escrow holder for any sale or transfer, the escrow number of any escrow, and the date when the buyer, transferee or lessee will take possession of the Lot.

(b) Effect of Failure to Notify. Until such time as the Association receives the notification required in Subsections (i) and (ii), above, a transferee or lessee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder that are duly provided to the transferor or lessor. Pursuant to Section 4.6(a)(ii)(E), the Board has the power to adopt Association Rules consistent with this Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

(c) Contract Purchasers. As provided in Section 2.4(a) above, a contract seller may delegate the seller's Member rights, including voting rights. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(d) Notification Regarding Governing Documents.

(i) As more particularly provided in the California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection that, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special



Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association (or its managing agent) shall, within ten (10) days of the mailing or delivery of a request for the information described above, provide the Owner with copies of said documents. The Association (or its managing agent) shall be entitled to impose a fee for providing copies of those documents equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Lot.

(e) Payment of Assessments and Compliance With Association Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all Association Rules set forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(f) Responsibility for Conduct of Others. Each Owner shall be fully responsible for informing members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests and/or invitees of the provisions of the Governing Documents and shall be fully responsible for any violation of the

provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests and/or invitees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests and/or invitees.

(g) Indemnification for Damage & Injury.

(i) Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance).

(ii) Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Common Area due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, employees, guests, invitees, or licensees.



(iii) Each Owner, by acceptance of his or her deed, agrees personally and for Family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, including Exclusive Use Common Area, except to the extent that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or other person temporarily visiting said Owner's Lot or the Development.

No decision resulting in the liability of an Owner pursuant to this subsection shall be reached without providing such Owner with notice and hearing pursuant to Section 12.6.

(h) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(i) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (i) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(j) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

(k) Obligation To Permit Entry by Association and/or Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs that are reasonably necessary for the use and enjoyment of his or her Lot, provided that the adjacent Owner furnishes the Owner whose Lot is being entered upon with at least twenty-four (24) hours written notice of his or her intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform his or her use and schedule his or her entry in a manner that respects the privacy of the persons residing within the Lot and the convenience of the Owner of the Lot. Each Owner shall also honor the right of the Association and its agents to enter Lots as provided in Section 4.5(b) of this Declaration.

**Section 2.6 Nonseverability of Component Interests.**



(a) Severance Prohibited. An Owner shall not be entitled to sever his or her Lot from his or her membership in the Association. None of the component interests in a Lot can be severally sold, conveyed, encumbered or hypothecated. Any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Lot over the Common Area from the Owner's Lot. Any attempt to do so shall be void.

(b) Limitation on Interests Conveyed. Unless otherwise expressly stated, any conveyance of a Lot or any portion of it by an Owner shall be presumed to convey the entire Lot. However, nothing contained in this subsection shall preclude the Owner of any Lot estate from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Lot with any other person or persons.

### **Section 2.7 Transfer or Conveyance of Lot Terminates Obligations**

Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments and other charges that were levied against said Lot and transferring Owner prior to the subject transfer.

## **ARTICLE III: RESTRICTIONS & USE OF PROPERTY**

### **Section 3.1 Occupancy and Use.**

(a) Occupancy. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations

(b) Restriction on Businesses. Each Lot shall be used exclusively for residential purposes except as provided in this Section. No business of any kind shall be established, maintained, operated, permitted or conducted within the Development except home offices and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances provided, however, that there shall be no external evidence of such business/home office (i.e., no increased pedestrian and/or vehicular traffic, no increase in parked vehicles, no signs, and no activities that are apparent or detectable by sight, sound or smell from outside of the Lot) and such activities do not increase Association's insurance obligations and/or premiums, and/or such activities are not inconsistent with residential nature of Development.

### **Section 3.2 Rental and Lease Restrictions**



As used in this Article, the terms "lease" or "rental" shall mean any and all agreements, including, but not limited to leases, subleases and/or rental agreements, for the occupancy of any Lot. Any Owner who wishes to lease the Owner's Lot must comply with all of the provisions of this Section 3.2 and any applicable Association Rules.

(a) All Leases to be in Writing. All leases for a Lot within the Development shall be in writing.

(b) No Short-Term Leases/Subleases/Rentals and No Hotel Services. No Owner, contract purchaser, tenant or lessee shall be permitted to lease or sublease a Lot for transient or hotel purposes (i.e., a rental for any period less than thirty (30) days and/or a rental that includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service, or bellboy service).

(c) All Lessees and Tenants Subject to Governing Documents. Any lease or rental of any Lot within the Development shall be subject to all provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner shall be responsible for compliance by such Owner's tenant(s) or lessee(s) with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Lot. The failure of any tenant or lessee to comply with the terms of the Governing Documents shall be a default under the lease/rental agreement and a failure to perform a condition and covenant of the lease/rental agreement.

(d) Owner's Duty of Notification. Owners of Lots shall disclose to potential buyers the existence of the rental restriction provisions set forth in this section. Each Owner shall notify the secretary of the Association or the Association Manager, if any, of the names of any tenant or lessee of the Owner's Lot pursuant to Section 2.5(a).

(e) Discipline of Lessors.

(i) Lessor's Responsibility for Tenant. An Owner who leases Owner's Lot to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents, including but not limited to, all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time during the tenant's or lessee's occupancy and use of the Lot. The Owner shall also be responsible for repair or replacement of any portion of the Common Area or Common Facilities damaged by his or her tenant or the tenant's family members, guests or invitees.

(ii) Fine or Penalties for Violations of Governing Documents by Tenants. Subject to subsection (iii), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of



finances and penalties against the Owner. Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment as defined in Section 5.4, below.

(iii) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to take any disciplinary action against an Owner-lessor on account of the misconduct of the Owner's lessee or tenant unless and until the notice and hearing requirements of Article XII of this Declaration have been fulfilled, and the Owner-lessor has been given a reasonable opportunity to obtain the compliance of his or her tenant with the Governing Documents or to terminate the lease. Any lessee or tenant whose conduct is the basis of such disciplinary action shall have the same notice and hearing rights as the Owner.

(f) Discipline of Lessees; Exercise of Eviction Authority. Whether or not such right is stated in any rental agreement, every Owner who rents his or her Lot automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment (see Section 5.4 below) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from Sections 1165 and 383 of the California Code of Civil Procedure and shall only arise if the tenant's or lessee's conduct involves continuing or repeated damage to or destruction of Common Areas or Common Facilities, or constitutes a continuing nuisance or unreasonable interference with the quiet enjoyment of other residents.

### **Section 3.3 Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling**

The following activities are prohibited and shall not be performed on, upon or within the Development:

(a) Activities that are nuisances, or that cause unreasonable embarrassment, disturbance or annoyance to any residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or that shall, in any way, interfere with residents' use and enjoyment of their Lots and/or the Common Area and facilities thereon, provided, however, that the Board may decline to involve itself or the Association in disputes concerning adjacent Lot Owners if such dispute does not involve the Common Area or any other Owner or resident of the Development and if the Board determines that in view of the possible expenditure of time, effort and costs involved in attempting to resolve the dispute, it would not be in the best interests of the Association to become involved;



- (b) Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;
- (c) Activities that are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development;
- (d) Drilling, refining, quarrying or mining operations of any kind;
- (e) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Development;
- (f) Activities that will obstruct the sidewalks, streets or Common Area within the Development or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs;
- (g) Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Development without the prior written consent of the Board and all public authorities with jurisdiction;
- (h) Activities or conditions that would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin; and
- (j) Harassment, or physical or verbal abuse of the Association's Directors, Officers, manager, contractors, employees, agents, or manager, or any obstruction or interference with such persons while they are performing duties for the Association.

Without limiting any of the foregoing, no Owner or other resident shall permit noise, sound(s) or sight(s) that would unreasonably disturb another's enjoyment of his or her Lot and/or the Common Area.

### **Section 3.4 Signs**

No signs of any type shall be placed upon the General Common Area without the prior written consent of the Board. No commercial signs except "For Sale" or "For Lease" signs not over five (5) square feet; no noncommercial signs and posters greater than nine (9) square feet and no noncommercial flags or banners that are more than fifteen (15) square feet are permitted within the Development, unless such signs, posters or flags are not visible from outside the Lot.

### **Section 3.5 Antennas and Satellite Dishes**

No owner shall construct, install and/or use and operate any radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment within the Common Area except with the express written





permission of the Board. No satellite dish or antenna greater than one meter (39.4 inches) in diameter shall be installed within any Lot so as to be visible at ground level from any adjacent Lot or Common Area. Lot Owners shall notify the Board of the installation of any other antenna, satellite dish or signal reception or transmission device (except those installed within the interior of the Residence) and shall comply with all Association Rules regarding installation, safety and maintenance of such equipment. All such Association Rules shall conform to the requirements of state and federal law.

### **Section 3.6 Solar Devices**

An Owner shall notify the Association of the installation of any solar energy system on any portion of the Owner's Lot visible from an adjacent Lot or Common Area within ten days of the installation of such equipment. "Solar energy system" as used in this section refers to any equipment used for the primary purpose of converting solar energy into heat or electricity and may be more specifically described in the Association Rules. Maintenance, operation and repair of such equipment shall conform to the Association Rules.

### **Section 3.7 Use of Common Area**

Nothing shall be placed or stored in the General Common Area without the prior written consent of the Board. No Improvement within the Common Area shall be installed, altered, repaired, removed or replaced without the written consent of the Board. No excavation or other work shall be performed within the Common Area without the written consent of the Board. No boat berth cover or structure of any kind and no alteration, change or addition of any kind shall be made to any dock or gangway within the Development without the written consent of the Board. No waste shall be committed in the Common Area.

### **Section 3.8 Animals**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Residence Lot or in the Common Area, except that dogs, cats or other household pets may be kept on Residence Lots subject to rules and regulations adopted by the Association. No dog shall be allowed on the Common Area without being held on a leash. The Association may adopt rules and regulations providing for the removal to a pound of any dog found on the Common Area without being held on a leash.

### **Section 3.9 Vehicles and Parking**

No vehicles other than automobiles, SUVs, motorcycles and noncommercial pickup trucks may be parked overnight in a carport, driveway or elsewhere within the Development except in a garage. Any vehicle parked in a driveway must fit entirely within the driveway; no portion of the vehicle may extend into the street. Boats owned by Lot Owners or tenants and kept within the Development shall be kept inside garages or moored at all times in the appropriate slip provided for



each Residence Lot. The Board may adopt Rules that place additional restrictions on parking and mooring within the Development.

**Section 3.10 Boats, Docks and Slips**

(a) Definition and Limitations. The term "boat" shall mean and refer to any conventional pleasure craft designed for and capable of being propelled on water by sail, motor, paddles or oars. No rafts, similar floating objects, non-powered houseboats or vessels designed primarily for living aboard or designed for some purpose other than navigating on water and which are not designed or capable of self-propulsion on water shall be kept within the Development without the written permission of the Association.

(b) Use of Slips. All boats moored in the slips provided for each Residence Lot shall comply with the following:

(1) No part of the boat as it is moored in the slip shall extend over the head float system. However, the Board may waive the restriction and permit part of the boat to extend over the head float system provided all of the following conditions are met: (i) the Board is satisfied that such extension will not be dangerous or cause damage to the head float; and (ii) all Owners having use of that head float shall indicate their approval in writing. (2) No part of the boat as it is moored in the slip shall extend beyond the end of the mooring slip fingers more than ten percent (10%) of the total overall length of the boat. The total overall length of the boat ("OAL") shall include, but shall not be limited to, the bow spirt, stern spirt, davits and any other appendages of the boat that extend beyond the water line length. No portion of the boat may extend over the head float or any finger. The length of the mooring slip shall be measured as follows;

(i) In the case of a conventional slip with two parallel fingers (whether straight or angled), the slip length is the distance from the inside head float to the end of the longest finger which shall include a piling if present.

(ii) In the case of a side tie which is parallel to a conventional slip (commonly known as an "end tie"), the finger length will additionally include the width of the headfloat.

(iii) In the case of a side tie, the length shall be the inside length of the side tie from the finger to the end of the side tie which shall include a piling if present.

The requirements set forth in Exhibit B hereto shall be deemed incorporated by reference into this section and shall be enforced as part of this Declaration.

(3) Boats shall be of such beam width that they may be moored so as not to bear continuously against either or both of the mooring slip fingers.



(c) Installation of Owner Equipment on Docks. The Board may grant an exclusive easement to an Owner for the purpose of installing and maintaining utility lines and equipment to provide utility services from the Owner's Lot (the dominant tenement) on and across Common Area (the servient tenement) to the Owner's or tenant's boat berthed in the slip assigned to Owner. This easement shall be appurtenant to the Lot and may not be separately sold or conveyed. No such lines or equipment may be installed or maintained until Owner has made a written application therefor and received written approval from the Board or Architectural Review Committee pursuant to Article VIII of this Declaration. The Association Rules may contain minimum standards for the installation and maintenance of such lines and equipment and for the type of equipment which will or will not be permitted. The Board may cause the removal without notice to the Owner of any lines or equipment within the Common area for which written approval has not been obtained pursuant to this subsection or which the Owner has failed to properly maintain or secure to such an extent that it has become a hazard to persons or property. The easement authorized by this subsection may be terminated if the Owner does not properly maintain such lines and equipment. Owners who have installed lines and equipment covered by this subsection prior to the recording of this Declaration shall have sixty (60) days to submit a request pursuant to Article VIII of this Declaration for approval of such lines and equipment. If such approval is not obtained, the lines and equipment shall be removed.

(d) Use of Boats as Residences. No person, including owners, tenants, guests or their family members, may use a boat docked within the Development as a Residence. Overnight habitation for more than 5 nights in any 30-day period on a boat docked within the Development shall constitute a violation of this subsection. Upon written application by the homeowner, the Board may grant permission to extend any single period of habitation by an 5 additional nights provided that no similar variance has been granted to owners, residents or guests of that address within that previous 180 days.

### **Section 3.11 Sports Equipment**

No basketball standard or fixed sports apparatus shall be attached to the exterior surfaces of any Residence or garage except where such exterior surface faces an interior patio.

### **Section 3.12**

Enforcement of Property Use Restrictions.

(a) Voluntary Compliance. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and other residents with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 12.6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing



Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

(b) Board's Discretion Concerning Enforcement. The Board shall have the discretion to decide the type of enforcement action which is appropriate for any violation of the restrictions contained in this Article III, taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

#### **ARTICLE IV: HOMEOWNERS ASSOCIATION**

##### **Section 4.1. Management and Operation**

The Association shall manage and operate the Development in accordance with applicable provisions of the Governing Documents and California law, including law applicable to non-profit mutual benefit corporations and common interest developments.

##### **Section 4.2. Association Membership**

Every record Owner of a Lot shall be a Member of the Association. The Owner(s) of a Lot shall hold jointly one membership in the Association for each Lot owned. The membership shall be appurtenant to each Lot and may not be separated from ownership of the Lot to which it relates. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed. Tenants who are delegated rights of use pursuant to Section 2.4 hereof do not thereby become Members, although the tenant and members of the tenant's Family shall, at all times, be subject to the provisions of all Governing Documents.

Each Owner shall remain a Member of the Association until his or her ownership in every Lot in the Development ceases, at which time his or her membership in the Association shall automatically cease. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.



### **Section 4.3 Voting**

Only Members shall be entitled to vote, and votes shall be cast for each Lot owned by said Member, as more particularly set forth in the Bylaws. Voting rights may be temporarily suspended under those circumstances described in Section 12.6, below.

### **Section 4.4 One Class of Membership**

The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

### **Section 4.5 Powers and Authority of the Association**

(a) Powers Generally. The Association shall have the responsibility of managing and maintaining the Common Areas and Common Facilities and shall discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Association and its Board shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in this Declaration and Section 5.1 of the Bylaws.

(b) Association's Limited Right of Entry. At the Board's discretion, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Lot or Exclusive Use Common Area to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this Subsection (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency



situations, the Association or its agents shall furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Lot.

The Association's rights of entry under this Subsection (b) shall expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Development and the Owners of Lots therein.

(c) Association as Attorney-in-Fact for Owners. Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles IX and X hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

#### **Section 4.6 Board of Directors**

The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of the Directors shall be as established in the Bylaws.

(a) Powers of the Board. The Board shall have all of the powers and duties set forth in the Governing Documents:

(i) Exclusive Power. Except as expressly otherwise provided herein, the powers and duties of the Association that the Governing Documents do not reserve to the Members shall be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association shall not be exercised or performed by any Owner individually without the written consent of the Board.

(ii) General Powers of the Board. Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board shall have the following powers:

(A) To call meetings of the Members.



(B) To appoint and remove at pleasure all officers, committees (including the Nominating and Architectural Review committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 4.7(c)), and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration shall be construed to prohibit the employment by the Association of any Member, Director or officer of the Association in any capacity whatsoever.

(C) To establish, fix, levy, assess and collect assessments against the Owners of Lots within the Development and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of the Governing Documents.

(D) To authorize and cause the Association, subject to Section 4.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice. Any reference to the "term" of a contract as used in this Subsection 4.6(a)(ii)(D) shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

(E) To adopt, amend, and repeal Association Rules consistent with this Declaration relating to use of the Common Area (including Exclusive Use Common Area) and the residential Lots, the conduct of Owners, and their families, tenants, guests and invitees within the Development and such other matters as authorized by the Governing Documents. The Association Rules shall be considered as part of the Governing Documents of the Association and may be enforced in the same manner as any other Governing Document. However, no Association Rule shall restrict any rights of Owners or residents established by the other Governing Documents (Articles, Bylaws and this Declaration), and in the event of any conflict between an Association Rule and any other Governing Document, the provisions of the other Governing Document shall control.

(F) To delegate its powers to committees, officers, or employees of the Association.

(G) Upon the same approval of the Members as required for a Special Assessment under Section 5.3(b) of this Declaration, to borrow funds and incur debt for the purpose of maintaining and improving the Common Area, and to encumber property and/or member assessments of the Association as security for the repayment of such debt.



(H) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a Planned Development.

(I) Except as expressly otherwise provided herein, the Board shall have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(J) Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(K) Bring and defend actions on behalf of two or more Members or the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association. Prior to filing litigation regarding any disciplinary action against a Member, the Board shall comply with the requirements set forth in Section 12.6.

(L) Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents, in accordance with a schedule of monetary penalties adopted by the Board and distributed to all Members, suspend the voting or other membership rights and privileges of a Member, during any period in which such Member shall be in default in the payment of any assessment, fine, or other charge levied by the Association, and/or for any infraction of the Governing Documents, and permit the towing of unauthorized vehicles parked within the Development in violation of the Governing Documents.

(iii) No Active Business. Nothing contained in this Declaration, however, shall be construed to give the Board authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them. The Board shall have no such power or authority. However, this Subsection (iii) shall not prohibit the Association and/or its Board from acquiring, owning, leasing and/or selling any Lot within the Development.

(b) Duties of the Board. The Board shall:

(i) Association Duties. Cause all duties imposed on the Association by Governing Documents to be properly performed.

(ii) Records. Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.





(iii) Supervise. Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

(iv) Assessments. With reference to assessments of the Association:

(A) Fix, levy and collect assessments pursuant to the provisions of Article V of this Declaration.

(B) Approve the annual budget and fix the amount of the assessment against each Member for each assessment period in compliance with the provisions of Civil Code Section 1365, et seq., or comparable superseding statute;

(C) Prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member;

(D) Send written notice of each assessment to every Member subject thereto; and

(E) Issue or cause an appropriate officer to issue certificates as required by Sections 5.12 and 8.16.

(v) Insurance. Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

(vi) Vacancies. Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall.

(vii) Discharge of Liens. Pay any amount necessary to Bond or discharge any claim that may be or become a lien or encumbrance levied against the Development as a whole or any part thereof that constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be assessed against each such Owner and its Lot as provided in Section 5.4. No decision resulting in such liability or assessment shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 12.6 of this Declaration.

(viii) Enforcement. Commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of this Declaration, the Articles, the Bylaws, the Association Rules, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing.



However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association.

In addition, the Board may suspend the voting rights of an Owner or suspend the privileges of an Owner or its Family, tenants, or lessees, or their guests, invitees, or licensees to use the recreational facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the accused Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 12.6 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made. The Board may delegate some or all of its enforcement rights to a Disciplinary Committee.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Lot, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

In the event legal action (including arbitration or mediation required under California law as a prerequisite to any lawsuit) is instituted by the Board pursuant to this section, any judgment or award rendered in any such action shall include all costs of collection, court/arbitration/mediation costs and reasonable attorneys' fees.

(ix) Operating Requirements. Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments that the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the costs thereof shall, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

#### **Section 4.7 Limitations on Powers of The Association**



Neither the Board nor the Association shall have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

(a) Entering into a contract with a third person to furnish goods or services for the Common Area, the Lots or the Association for a term longer than one (1) year with the following exceptions:

(i) A management contract as long as such contract contains provisions that allow the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

(iv) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration.

For purposes of this Subsection (a) of Section 4.7 the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of said term.

(b) Selling, 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.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) Filling a vacancy on the Board caused by the removal of a Director by the Members.

#### **Section 4.8 Nonliability of Officials**

To the fullest extent permitted by law, neither a current nor past Director, officer, Committee of the Association or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), shall be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice



suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and that such person or entity reasonably believed to be the scope of its duties.

(a) Claims Regarding Breach of Duty. No Released Party shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association shall recover

damages from such Board Member or officer if all of the following conditions are satisfied:

- (i) The Board Member or officer is an Owner of no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 1365.7(a)(4) or comparable superseding statute.

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board Member or officer for



the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Lot within the Development as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 1365.7. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this Subsection (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

(c) Indemnification of Directors, Officers, Employees and/or Agents. The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents shall be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute. As set forth in Article IX, the Association has the right to purchase and maintain insurance on behalf of its Directors, Officers, employees and/or agents against liability asserted against or incurred by any Director, Officer, employee and/or agent in its capacity or status as such.

## **ARTICLE V: ASSESSMENTS**

### **Section 5.1 Assessments Generally**

(a) Covenant to Pay Assessments. Each Owner of one (1) or more Lots, by acceptance of a deed or other conveyance of the Lot (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments.

(i) Obligation Runs With the Land. The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all Assessments and charges assessed during the time he or she is record Owner of such Lot.

(ii) Personal Debt of Owner. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was



levied. For purposes of this subsection, for Special Assessments payable in installments, the date(s) set forth in the notice of the assessment shall be the date(s) the installment payment is due.

(iii) Liability of Subsequent Owner. Any Grantee and/or Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased that become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

(iv) Liability of Prior Owner. After a record Owner transfers, of record, any Lot he or she owns, he or she shall not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and the previous Owner shall remain personally liable. A contract seller of any Lot shall continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Alameda County.

(c) Authority of Board to Levy Assessments. The Board shall have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board shall not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board shall also have the power and authority to levy Special Individual Assessments against particular Owners and their Lot(s).

(d) Authority of Board to Record Assessment Lien. The Board shall have authority to prepare and record a lien against any Lot for which assessments are delinquent, and to foreclose upon such lien pursuant to Section 5.9 of this Declaration.

(e) 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 Lot 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 non-use of his or her Lot or any other portion of the Development.

(f) Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

### **Section 5.2 Regular Assessments**

(a) Purpose of Regular Assessments. All Regular Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and, in particular, for



the maintenance, operation and improvement of the Lots, Common Area, and any real or personal property in which the Association holds an interest.

(b) Annual Budget; Regular Assessments & Board Authority. In accord with the timing provisions of Civil Code Section 1365 (or comparable superseding statute), if any, the Board shall estimate the total amount required to fund the Association's 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 and funds necessary to meet the Association's financial obligations under the Private Roadway and Utility Maintenance Agreements described in Section 6.1(c) and any similar agreements), prepare and then distribute to all Association Members a budget satisfying the requirements of the Bylaws. 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.

(c) Board or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (d) and (f) below, the Board of Directors may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Association's immediately preceding fiscal year without the approval of the Members (see Section 5.7, below). For purposes of this Subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Lots for that particular year.

(d) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to Assessment increases necessary to address emergency situations. For purposes of this Subsection (d), an emergency situation is any 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 Areas, Common Facilities or any portion of the separate interests that the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests that the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (a), above, provided that, prior to the imposition or collection of an assessment under this Subsection (d)(iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably



foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(e) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with Subsection (b), above, shall be equally divided and then allocated among, assessed against, and charged to each Lot.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 5.3 for that year, shall be automatically assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner shall not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

(g) Assessment Due Date, Installment Payments & Delinquency. The Regular Assessment levied against each Owner and his or her Lot for the current fiscal year shall be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (i.e., current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board of Directors.

Installments of Regular Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due (if such day is on a weekend or holiday, then on the next business day). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

(h) Mailing Notice of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than forty-five (45) days prior to the beginning of the next fiscal year.

### **Section 5.3 Special Assessments**





(a) Purpose of Special Assessments. Subject to the membership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Insufficient Regular Assessment. If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit that the Association may incur in the performance of its duties and the discharge of its obligations under the Governing Documents. However, the Board's assessment authority pursuant to this subsection shall be subject to the membership approval requirement set forth in Section 5.3(b) below.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX of this Declaration.

(iii) Reimbursement of Reserve Account(s). A Special Assessment may be levied to reimburse any Reserve Account for funds borrowed from it to meet current operating expenses or to deal with emergencies.

(iv) Repair of Defects or Damage. A Special Assessment may be levied to repair damage or defects discovered in the Common Area or Common Facilities or within those portions of a Lot or Residence that are the responsibility of the Association to maintain and repair, where the reserve funds are inadequate to pay for such repairs, or where the affected component is not a component included in the reserve funding program.

(b) Membership Approval. No Special Assessments described in Section 5.3(a) hereof that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written approval of the Owners as required by Civil Code Section 1366(a) or comparable superseding statute. This Owner approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot



in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied shall be mailed to each Owner.

(d) Due Date for Special Assessments. Unless the time for payment is extended by the Board, payment of all Special Assessments shall be due thirty (30) days after the Board gives the Owners written notice thereof or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

(e) Installment Payments of Special Assessment. The Board may, in its discretion, prorate the amount of any permitted Special Assessment over a period of months. Installments of Special Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment installment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any Special Assessment installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency and the Board may in its discretion declare the entire unpaid amount of the Special Assessment immediately due and payable.

**Section 5.4. Special Individual Assessments.**

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (i) through (v), below or as otherwise provided in this Declaration or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section

5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 12.6 hereof, 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 Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Lot that the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, any Member of Owner's Family, or any of Owner's tenants, lessees, guests, contract purchasers, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, 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 Special Individual Assessment.



(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot 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, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

As long as Civil Code Section 1367.1(e) (or comparable superseding statutes) places restrictions upon the Association's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (i.e., fines or penalties imposed under Article XII) can only be enforceable by the sale of said Lot pursuant to judicial foreclosure. All other liens under Subsection (ii) may be enforceable by the sale of said Lot under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s).

(iii) Required Maintenance on Lots. As more particularly provided in Section 4.5(b) (and without limiting the generality of that subsection), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(iv) Diminution in Insurance Proceeds. Pursuant to Section 9.5, the Association shall levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

(v) Increase in Insurance Burden. The Association shall have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.

(vi) Additional Costs Associated With Extended Payment Program. If the Board permits payment of a special assessment by periodic payments over a specified period of time and funds such an extended payment program through a commercial loan or line of credit, the Owners who participate in such a program (rather than paying the entire special assessment when due) shall be assessed the interest, loan fees and other costs associated with the program in addition to the principal amount of the special assessment.



(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 5.4(a), notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments shall be delinquent if not actually received by the Association or its designated agent by the forty-fifth (45th) day after mailing of notice of the Assessment. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

### **Section 5.5 Reasonableness of Assessments**

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

### **Section 5.6. Exemption of Certain Parts of the Development From Assessments**

The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Development dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

### **Section 5.7 Notice and Procedure for Member Approval**

In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members shall be solicited by written ballot conducted in accordance with Section 3.4 of the Bylaws and the Association Rules. The approval of a majority of a quorum of the Members shall be required for approval of any Regular Assessment increase or Special Assessment requiring Member approval. The quorum required for such membership action shall be the percentage required by the Bylaws.

### **Section 5.8 Maintenance of Assessment Funds**



(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, shall be promptly deposited in two (2) or more insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board of Directors that has offices located within the United States of America, which accounts shall be clearly designated as either an "operating" or "reserve" account.

There shall be established and maintained a cash deposit account into which shall be deposited the operating portion of all Assessments. Disbursements from such account shall be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article V.

In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in Subsection (b), below.

(b) Separate Accounts & Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom,



provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 shall be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(c) Checks. All checks (or other demands for payments of Association money) and/or notes of the Association shall be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board of Directors may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts shall require the minimum signature requirements of Civil Code Section 1365.5 (i.e., two Directors or an Officer (who is not a Director) and a Director).

#### **Section 5.9 Collection of Assessments; Enforcement of Liens**

(a) Delinquent Assessments. If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not actually received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose late charges for any delinquent Assessments in the amount of ten dollars or ten percent (10%) of the delinquent amount, whichever is greater.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of Liens for Delinquent Assessments. The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed from and after the time the Association causes to be recorded with the Alameda County Recorder a Notice of Delinquent Assessment in conformance with Civil Code Section 1367.1 or comparable superceding statute . Each default shall constitute a separate basis for a lien. Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded in the Office of the County Recorder of the County of Alameda, State of California, a Notice of Satisfaction and Release of Lien.



(ii) Partial Payment of Assessments. Subject to the limitations imposed by Civil Code Section 1367.1 or comparable superseding statute, if any, any partial payments the Association receives will be applied as specified in the Association's Delinquent Assessment Collection Policy and/or Association Rules.

(iii) Remedies Available to the Association to Collect Assessments. In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure. However, judicial or nonjudicial foreclosure shall only be available to collect delinquent assessments in excess of \$1,800 exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees or interest or if the assessments are more than 12 months delinquent. The Association shall, in collecting any delinquent assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents or California law. (iv) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association in compliance with California law. (See Civil Code Section 2924c, or comparable superseding statute). Each of the Owners, by mere acceptance of a deed to a Lot, gives the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(v) Judicial Foreclosure. In the event foreclosure is by a lawsuit in the Superior Court seeking a judicial determination of the Association's right to foreclose, reasonable costs, including attorneys' fees, shall be allowed.

(vi) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.



(c) Payment Plans. The Board may, but is not required to adopt rules or policies (which shall become part of the Association Rules) permitting an owner to make installment payments on any delinquent assessments, accelerated assessments, late charges, fees and costs of collection, attorney's fees and/or interest, subject to reasonable terms and conditions, including payment of additional administrative costs for administering such a payment plan.

#### **Section 5.10 Transfer of Lot by Sale or Foreclosure**

The following shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Assessment Liens Recorded Prior to Transfer. Except as provided in Subsection (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) Foreclosure by Holder of Prior Encumbrance. The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other mortgage or lien recorded before the Association's Notice of Delinquent Assessment is recorded.

(c) Liability of New Owner for Future Assessments. No sale or transfer of a Lot as the result

of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Lot (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) Personal Liability of Prior Owner for Assessments. No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

#### **Section 5.11 Priorities**

Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V shall have priority, as of the date of recording of the Notice of Delinquent Assessment, over all other liens and encumbrances applicable to the Lot, except (a) all taxes, bonds, Assessments and other levies that, by law, would be superior thereto; (b) any lien or encumbrance recorded prior to the recording of the Notice of Delinquent Assessment; or (c) the lien or charge





of any First Mortgage of record made in good faith and for value, provided that such subordination shall apply only to the Assessments that have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage.

**Section 5.12 Estoppel Certificate**

A certificate executed by a majority of the members of the Board setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all assessments due are paid, if such is the case) shall be conclusive against the Board, the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner shall be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in San Francisco, California.

**Section 5.13 Unallocated Taxes**

In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

**Section 5.14 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 occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration that 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. Upon Owner's default, the right to collect and retain rents shall be deemed revoked, and the Association, after providing written notice to the defaulting Owner may, in its discretion, pursue one or more of the remedies provided in Civil Code §2938(c) or comparable superseding statute for enforcement of an assignment of rents provision.

**Section 5.15 Waiver of Exemptions**

Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.



**Section 5.16 Secondary Address**

Any Member may provide the Association with a secondary address. Any notice of a secondary address shall be in writing and shall be mailed to the Association in a

manner that shall indicate the Association has received it. If a secondary address is provided in accordance with this section, the Association shall send any and all correspondence and legal notices regarding assessments and foreclosures required by this Article V or by California law to both the primary and the secondary address.

**ARTICLE VI: MAINTENANCE RESPONSIBILITIES**

The Development shall be maintained in an attractive, safe, and sanitary condition and in a good state of repair.

**Section 6.1. Association Maintenance Responsibility**

(a) Common Area. Except as is provided in this Section 6.1, the Association shall be solely responsible for all maintenance, repair, and replacement within the Common Area, including all Improvements thereon.

(b) Lots/Residences. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot/Residence as follows:

- (1) Painting, caulking and cosmetic (nonstructural) repairs to the exterior of the Residences;
- (2) Maintenance, repair and replacement of exterior trim, siding, roof coverings, flashing, gutters and downspouts of Residences (excluding additions or alterations made to the Residence after initial sale);
- (3) Maintenance and replacement of landscaping in unenclosed front yards of Lots (including irrigation systems);
- (4) Maintenance of banks and slope protection; and
- (5) Removal and replacement of any part of a patio, fence or overhanging eave that extends into or over the Common Areas under authority of an easement when access to a utility line underneath such patio, fence or overhanging eave is requested by any utility company.

The Association shall have no responsibility to maintain, repair or replace any portion of a Lot or Residence except as specifically set forth in this Section 6.1.

(c) Private Roadway and Utilities Maintenance Agreement. A part of the Common Area of the Development extends to the centerline of certain private roadways, designated as Private Roadway "A" and Private Roadway "B" on the Maps and



currently known as Cola Ballena and Porta Ballena respectively. The remainder of these roadways are on property which is not part of the Development. Pursuant to the First Amended Joint Private Roadway and Utility Maintenance Agreement recorded in the office of the Alameda County Recorder on September 15, 1970 as Document No. 70-99547, and the Second Collateral Joint Private Roadway and Utility Maintenance Agreement, recorded in the office of the Alameda County Recorder on September 19, 1990 as Document No. 90-250335, which were made with the other owners of these Roadways, and similar agreements relating to other roadways, the Association is required to pay a portion of the expenses relating to maintenance of the roadways and of the storm and sanitary sewers underlying the roadways. Such expenses shall be considered part of the Common Expenses of the Association and shall be included as part of the Regular Assessments. (d) Right of Entry. Pursuant to Subsections 4.5(b) and 5.4(a), above, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Lot, including Exclusive Use Common Area(s), to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform under Section 6.2, below, and/or perform work because a Lot or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

### **Section 6.2 Owner Maintenance Responsibilities**

(a) Common Area. Each Owner shall be liable for the costs incurred to repair or replace any portion of the Common Area that is damaged by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees. Except as specifically provided in this Section 6.2, Owners shall have no responsibility for maintenance, repair or replacement of any portion of the Common Area or any utility, drain, structure, landscaping or other improvement located with the Common Area.

(b) Lots/Residences. Except as the extent that maintenance, repair or replacement of any Lot/Residence (or portion thereof) is expressly and clearly made the responsibility of the Association in Section 6.1 above, each Owner shall be responsible for any and all maintenance, repair and replacement of the Owner's Lot and any improvements thereon, including but not limited to building foundations, structural framing, dry wall, perlins, pilings, joists, studs, all window and door glass and underground utilities and landscaping within enclosed portions of the lot. If said maintenance includes or involves any structural repair or replacement that is visible from the Common Area and/or public streets, the structural repair or replacement shall be in conformance with the architectural design of the Development and comply with the provisions of Article VIII.

(c) Adverse Effects of Maintenance, Repair and/or Replacement Activities. Subsection (b) above shall not entitle any Owner to impair the structural integrity of any building, Common Area and/or other Lot/Residence; increase the noise-



carrying capacity of floors, walls and/or ceilings; interfere with the use and enjoyment of the Common Area or of the other Lots/Residences; and/or violate any other provision of the Governing Documents.

(d) Fireplaces. As necessary, the Owner(s) of any Lot with one (1) or more fireplaces are required to have said fireplace(s), including but not limited to the firebox, flue, chimney, spark arrester, chimney cap and/or other parts of the fireplace, cleaned and maintained in compliance with current industry standards.

(e) Personal Property. The duty to repair, replace or restore personal property in the Development, including floor coverings and any paint or other covering on walls or ceilings of any Residence and any other personal property of any occupant or Owner of any Lot, that is damaged due to and/or resulting from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Lot or any part of a Building; and/or any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, manager and/or employee, shall be borne by the owner of said personal property. Individuals bound by this Declaration agree to bear the risk of any such loss and that the Association shall not be liable to reimburse them for property damage that is not covered by the Association's insurance.

(f) Wood-Destroying Pests and Organisms. Except as otherwise provided in this Subsection, the Owner of each Lot shall be solely responsible for eradication of any wood-destroying pests or organisms found anywhere within the Lot (including exterior surfaces of the residences) and for repair of any damage to the Lot and improvements thereon caused by any such wood-destroying pests or organisms. Upon the approval of a majority of the voting power of the Association, the responsibility for treatment or repair of

Residences occasioned by the presence of wood-destroying pests and organisms may be delegated to the Association, in which case the Association shall be entitled to recover the cost thereof by means of Special Individual Assessments pursuant to Section 5.4 of this Declaration, to be levied in equal amounts on the Lots requiring repairs or treatment under this subsection. For purposes of this subsection, "wood destroying pests and organisms" include but are not limited to termites, dry rot and mold.

(g) Tree Roots. Lot owners shall be responsible for any damage caused by roots of trees growing within the Owner's Lot, including those trees which the Association is responsible for maintaining.

(h) Utilities. Each Lot Owner shall be responsible for maintenance, repair and replacement of any plumbing or utility line, sewer line or telecommunications line exclusively servicing such Owner's Lot, wherever located.

### **Section 6.3 Recovery of Costs of Certain Repairs and Maintenance**



(a) Willful or Negligent Acts of Owner. In the event that the need for maintenance or repair that would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's Family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 12.6.

(b) Owner's Failure to Perform Required Maintenance. In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within ten (10) days after receipt thereof, or within such longer time as the Board deems appropriate. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Subsection 4.5(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.6, hereof. A Special Individual Assessment pursuant to Section 5.4 of this Declaration may be levied against the Owner to recover the costs incurred by the Association in performing such repairs or maintenance. In the event of an emergency threatening immediate injury to persons or property, the Association need not provide a notice and hearing before entering the Lot or Residence and performing the necessary maintenance or repairs; however a notice and hearing will still be required before any Special Individual Assessment for the work may be levied against the Owner.

#### **Section 6.4. Cooperative Maintenance Obligations**

To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association shall cooperate in the performance of maintenance work.

#### **Section 6.5 Capital Improvements**

(a) Definition of Capital Improvement. For purpose of this Section, "Capital Improvement" shall refer to any Improvement not existing at the time this Declaration is recorded or any modification to an existing Improvement which results in a significant change in appearance, design or function. A change to or addition of landscaping plants or material within the Common Area shall not be considered a Capital Improvement.

(b) Petition; Association Approval; Owner Approval. One-third (1/3) of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of capital improvements on or to the Common Area. Such petition shall be in such form and shall contain such information as the Association may require, including, without limitation, preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own



motion move for the construction, installation or acquisition of a capital improvement, in which case such motion shall be treated as if it were a petition duly submitted by the Owners.

(c) Approval of Petition. The Association may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area and/or the Lots, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

(d) Bids. Upon the approval of such petition by the Association, the Association shall obtain firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement, and the lowest acceptable bid or bids shall be deemed the estimated total cost of such capital improvement.

(e) Approval by Owners. If during the fiscal year aggregate expenditures for capital improvements exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Association shall present the proposed capital improvements and the estimated total cost thereof to all Owners for approval and obtain the Owners approval. Upon approval by the Owners as required by Section 5.3(b), a Special Assessment for Capital Improvement shall be levied as provided in Section 5.3.

(f) Construction. After the levy of the Capital Improvement Assessment, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such capital improvement as determined above, the Association shall construct, install, or acquire, or contract for the construction, installation or acquisition of the proposed capital improvement.

### **Section 6.6 Party Walls**

(a) General Rules of Law to Apply. Each wall which is built as part of the original construction of the Residences within the Development and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the costs



of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of the Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators.

(g) Pony Walls and Common Fences. Pony walls between Residence decks and fences separating Lots and Common Area shall be treated as party walls under this section, unless the Maintenance Matrix described in Section 6.7 below provides for a different allocation of maintenance and repair responsibility for these structures, in which case the provisions of the Maintenance Matrix shall govern.

### **Section 6.7 Maintenance Matrix**

The Board may prepare and adopt a Maintenance Matrix setting forth the Association vs Owner maintenance obligations for various components comprising the Development. So long as such Maintenance Matrix is not inconsistent with the provisions of this Article, upon adoption it shall become part of the Association Rules and shall be enforceable in the same manner as any of the other Governing Documents.

## **ARTICLE VII: EASEMENTS & RESERVATIONS**

### **Section 7.1 Encroachment Easements**

If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements. If the dimensions or location of a Lot or other Improvement differs from that shown and depicted on the approved plans, the actual dimensions and location shall prevail over that shown and depicted on the Maps for any and all purposes.



If any structure within a Lot is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements.

In no event shall a valid easement for encroachment be created in favor of an Owner or Owners, if said encroachment occurred due to the willful conduct of said Owner or Owners.

### **Section 7.2 Blanket Utility Easement**

There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage and electricity and the master television antenna or cable television system if any, and similar public or quasi-public improvements or facilities.

By virtue of this easement, it shall be expressly permissible for the providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Development except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Section 7.2 shall in no way effect any other recorded easement on the Development.

### **Section 7.3 Maintenance Easements**

An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area, including Exclusive Use Common Area, and any Lot to perform the duties of maintenance and repair of the Lots, Common Area and/or Common Facilities provided that any entry by any Member, the Association or its agents into any Lot shall only be undertaken in strict compliance with Section 4.5(b).

### **Section 7.4 Docking Easements**

Each Residence Lot as the dominant tenement shall have a nonexclusive easement appurtenant over the Common Area as servient tenement to enter upon and use the dock and mooring slip provided for the Lot. Said easement shall extend to the right of ingress and egress over common gangways to reach the mooring slip.

### **Section 7.5 Other Easements**





Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot and Common Area as shown on the Maps, including but not limited to driveways now or hereafter located upon the General Common Area for ingress, egress and utility purposes. It is not the intention of this Article VII to change, restrict or abandon any of the easements described and granted in the Original Declarations.

## **ARTICLE VIII: DESIGN REVIEW**

### **Section 8.1 Improvements Requiring Approval by Board**

No Improvement, including landscaping or excavation work that in any way alters the exterior appearance of any Lot or the Improvements located upon such Lot from its natural or improved state as it exists at the time of this Declaration is recorded, that would structurally change any building or that would affect the Common Area utility services or installations shall be made or done without the prior written approval of the Architectural Review Committee (or the Board if no Architectural Review Committee has been appointed) in accordance with this Article. However, plantings within the fenced portion of any Lot that are not visible at ground level from any adjacent Lot, Common Area or public street or sidewalk are not subject to this Article. Also, the Architectural Rules and Policies of the Association, as authorized in Section 8.4 below, may identify minor alterations and Improvements that may be made to the exterior of any Lot or Residence without complying with this Article.

### **Section 8.2 Appointment of Architectural Review Committee**

If at any time there shall not be a duly-constituted Architectural Review Committee (referred to throughout the remainder of this Article as "Committee"), the Board shall exercise the functions of said Committee in accordance with the terms of this Article VIII. If created, the Committee shall consist of a chairman and no less than two (2) nor more than four (4) additional members. All members of the Committee must be Members of the Association.

### **Section 8.3 Design Review Duties of Committee/Board**

It shall be the duty of the Committee (or the Board if no Committee has been appointed) to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules and Regulations pursuant to Section 8.4 and to carry out all other duties imposed upon it pursuant to the Governing Documents.

### **Section 8.4 Architectural Rules and Policies**

The Committee (or the Board if no Committee has been appointed) may from time to time adopt, amend and repeal rules and policies to be known as "Architectural Rules and Guidelines." Said rules shall interpret and implement the provisions



of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features that are recommended for use within the Development, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also require, as a prerequisite to processing any application for an Improvement covered by this Article, payment of a reasonable fee for plan review and processing. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

### **Section 8.5 Preliminary Approval**

Any Owner proposing to construct Improvements that require the prior approval of the Board may apply to the Board for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Association's Architectural Rules and Regulations.

The Purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for the final approval. Application for preliminary approval shall be considered and disposed of as follows:

- (a) Within thirty (30) days after proper application for preliminary approval, the Committee/Board shall consider and act upon such request. The Committee/Board shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Committee/Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.
- (b) Any preliminary approval granted by the Committee/Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval that consists of proposed Improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of these Governing Documents, shall be approved by the Committee/Board.
- (c) In no event, shall any preliminary approval be deemed to be an approval authorizing construction of the subject Improvements.

### **Section 8.6 Submission of Plans; Action by Committee/Board**



Plans, specifications and such information and documentation, as the Committee/Board may require for all proposed Improvements shall be submitted to the Committee/Board by personal delivery or certified mail to the Association Manager or other person designated by the Board or Architectural Committee .

The Committee/Board shall notify the applicant of its receipt of the application within ten (10) days of receipt of the application. Approval by the Committee/Board can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications.

All approvals and rejections of requests shall be in writing; provided, however, in the event the Committee/Board fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, the request shall be deemed denied. Under such circumstances, the written request may be resubmitted. If the Committee/Board fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request shall be deemed approved.

#### **Section 8.7 Basis for Approval of Improvements**

When a proposed Improvement is submitted to the Committee/Board for review, it shall grant the requested approval only if, in its sole discretion, the Committee/Board finds that all of the following provisions have been satisfied:

- (a) The Owner has complied with those provisions of the Architectural Rules and Regulations pertaining to the content, and procedures for submittal, of plans and specifications;
- (b) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Rules and Regulations in effect at the time such plans are submitted to the Committee/Board; and (ii) will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development, in harmony with the external structures and/or landscaping within the Development and are consistent with the overall plan and scheme of development and the purposes of this Declaration.

The Committee/Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar improvement or component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.



It is expressly agreed that the Committee/Board shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the Committee/Board acts reasonably and in good faith.

Without in any way limiting the generality of the foregoing, the Committee/Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Committee/Board.

In approving a request for construction of an Improvement, the Committee/Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions. The Committee/Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval.

#### **Section 8.8 Appeal of Decision of Committee to Board**

Unless the Board is acting as the Committee, upon its own initiative or upon the written request of the Committee or any Association Member, the Board may review (and affirm or alter) any decision of the Committee, provided that any such request for review shall be presented to the Board within thirty (30) days after the Committee's findings and decision has been mailed or delivered to the Owner who submitted the subject application, or, in the case of Common Area Improvements, to the managing agent of the Association. The Board, at an open meeting, shall review such request and render a decision within sixty (60) days of receipt thereof or at the time of the next regular Board meeting, whichever is later. A written notice of the Board's decision shall be sent to the person or persons who submitted the request for review within fifteen (15) days after the decision is made.

#### **Section 8.9 Non-Waiver**

The approval by the Committee/Board of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Committee/Board under this Declaration, 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.

#### **Section 8.10 Meetings**

The Committee/Board shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee/Board shall constitute the action of the Committee/Board. The Committee/Board shall keep and maintain a written record of all actions taken. Unless meetings to consider applications under this Article are conducted by the Board as part of a regular Board meeting, notice of the date, time and place of the



meetings of the Committee/Board shall be posted within the Common Area, included in the newsletter or mailed to all Owners. Any Member of the Association may attend and speak at any meeting of the Committee/Board. The chairperson of Committee or President of the Board may establish reasonable time limits for each interested person to speak concerning matters on the agenda. Any action by the Committee/Board authorized under this Article may be taken without a meeting upon the unanimous written approval of such action by the members of the Committee/Board.

### **Section 8.11 Variances**

The Committee/Board shall be entitled to allow reasonable variances with respect to this Article VIII or any restrictions specified in Article III in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) Required Hearing. If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee/Board must conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to all Owners of Lots within one-hundred (100) feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Committee/Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(b) Criteria. The Committee/Board must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement 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 Lot, Common Area or Owner within the Development.

### **Section 8.12 Compliance with Governmental Requirements**

The application to the Association and the review and approval of any proposal, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements. The Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

### **Section 8.13 Commencement**

Upon receipt of approval pursuant to this Article VIII, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations



and/or excavations pursuant to said approval. Commencement by Owner shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this Section 8.13, any approval previously given shall be deemed revoked unless the Committee/Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Committee/Board that there has been no change in the circumstances upon which the original approval was granted.

#### **Section 8.14 Completion**

The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 8.14, the Committee/Board shall proceed in accordance with the provisions of Sections 8.15 and 8.16, below, as though the failure to complete the improvements was a non-compliance with approved plans.

#### **Section 8.15. Inspection**

Inspection of work and correction of defects therein shall proceed as follows:

(a) Required Notice. Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements or upon the completion of any other work for which approved plans are required under this Article VIII, the Owner shall give written notice thereof to the Committee/Board.

(b) Inspection by Committee. Within sixty (60) days thereafter, the Committee/Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Committee/Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of noncompliance and shall require the Owner to remedy such noncompliance.

(c) Failure to Remedy Noncompliance. If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the Committee/Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after the Committee/Board determines the existence of the subject noncompliance. Notice of the



hearing date shall be given to the Owner and, in the discretion of the Board, to any other interested party at least ten (10) days in advance of the hearing date.

(d) Hearing and Determination by Board. At the hearing, the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same.

If noncompliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance. All expenses incurred in connection therewith shall be assessed against the Owner as a Special Individual Assessment.

(e) Committee's Failure to Notify Owner. If, for any reason, the Committee/Board fails to notify an Owner of any noncompliance within sixty (60) days after receipt of the Owner's notice of completion, the improvement shall be deemed to be in accordance with said approved plans.

#### **Section 8.16 Enforcement**

In the event that it comes to the knowledge and attention of the Association, the Board, or the agents or employees of either that a work of Improvement, or any modification thereof, is proceeding without proper approval and/or in noncompliance with approved plans, the Association shall be entitled to exercise enforcement remedies specified in this Declaration, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Committee/Board review and approval is obtained.

#### **Section 8.17 Estoppel Certificate**

Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by a majority of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Lot comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on said certificate



with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

#### **Section 8.18 Liability for Unauthorized Improvements By Prior Owners**

The current Owner(s) of a Lot are responsible for any Improvements or modifications to the Lot not authorized under this Article made by prior Owners of the Lot, and may be required by the Architectural Committee or Board to remove or modify any such unauthorized Improvements or modifications. However, this Section shall not apply to any current Owner who has obtained an estoppel certificate for his or her Lot as provided in Section 8.17 above, and such Owner shall only be responsible for unauthorized Improvements or modifications made after the issuance of the Estoppel Certificate.

#### **Section 8.19 Liability for Actions of Board or Committee**

Neither the Board, Committee (if any) nor any Member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Development; and/or (d) the execution and filing of an estoppel certificate pursuant to Section 8.17, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him.

### **ARTICLE IX: INSURANCE**

#### **Section 9.1 Types of Insurance Coverage**

The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance with the coverages described below:

(a) Fire & Casualty Insurance. A policy or policies of property insurance covering all insurable Common Area improvements, including fixtures and building service equipment, and the Lots and Improvements thereon against loss or damage by fire or other casualty for one hundred percent (100%) replacement cost (without respect to depreciation) of all such insured property and improvements, exclusive of land, foundations, excavation and other items normally excluded from coverage.

Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Subsection 9.1(a) shall contain (1) an agreed amount endorsement or its equivalent, (2) an increased cost of construction endorsement or a contingent





liability from operation of building laws endorsement or the equivalent, (3) a "Special Form" or "All Risk" endorsement, and (4) a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The Board shall have the power and authority to have an insurance appraisal and/or yearly insurance appraisal updates performed to aid the Board in determining the amounts of coverage needed by the Association.

The policies shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear and shall further provide for a separate loss payable endorsement in favor of the First Mortgagee of each Lot. (See Section 9.10, below, regarding deductibles).

(b) Public Liability & Property Damage Insurance. The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the

Association, the Association Manager, if any, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than two million dollars (\$2,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 1365.7).

(c) Directors & Officers Insurance. The Association shall obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association, the Association Manager and such other persons as the Board may designate as insured parties. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 1365.7). Directors' and officers' errors & omissions insurance (i.e., D&O coverage) shall insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or any officer, while acting in its capacity as such.

(d) Fidelity Bonds/Insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than the level required by Federal Home Loan Mortgage Corporation (Fannie Mae) and shall contain an endorsement for officers, directors, trustees and employees of the Association, the Association Manager and for all other persons handling or responsible for funds of or administered by the Association. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.



(e) Additional Insurance and Bonds. To the extent such insurance is available at a reasonable premium cost, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section 9.1(e), insurance on the Association's personal property, umbrella insurance, demolition insurance, earthquake insurance, flood insurance, and workers' compensation insurance. The amounts of said coverage shall be determined by the Board. The Association shall be the owner and beneficiary of any such insurance obtained.

### **Section 9.2 Owners Right to Policies & Notice of Significant Changes**

Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Association Members at any reasonable time. Pursuant to Civil Code Section 1365 or comparable superseding statute, the Association shall notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

### **Section 9.3 First Mortgagees' Insurance Requirements & Right to Obtain Policies**

An Eligible First Mortgagee for any Lot in the Development has the right to supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those Eligible First Mortgagees who have provided said minimum requirements to the Association, the Eligible First Mortgagees can request that the Association increase its coverage to match those minimum insurance requirements. The requesting Eligible First Mortgagee(s) shall be responsible for the payment of any increase in the Association's insurance premiums due to said request. All First Mortgagees for any Lot in the Development have the right, upon written request, to obtain copies of current insurance policies and/or satisfactory evidence of the Association's payment of premiums.

Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association shall continuously maintain in effect such fire, casualty, and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for Planned Development projects established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) have notified the Association in writing that it is a Mortgagee, Owner of a Lot, an insurer of any Mortgage, or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such insurance requirements may include, but not by way of limitation, a "Special Lot Endorsement" or an "Inflation Guard Endorsement."

### **Section 9.4 Coverage Not Available**



In the event any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available that provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

#### **Section 9.5 Limitations on Required Insurance**

The Association shall not be held responsible for insuring the interior of any Residences, the personal property of the occupants of any Lot, and/or those portions of any Lot or Residence that the Association is not required to maintain, repair or replace under this Declaration.

#### **Section 9.6 Owners' Insurance**

Notwithstanding anything contained in the Governing Documents to the contrary, individual Owners shall be responsible for obtaining their own personal liability insurance, insurance on the personal property contents of their Residence and insurance for those portions of the Lots and Residences that under this Declaration are the responsibility of the Lot Owners to maintain, repair or replace, including but not limited to floor and wall covering, interior fixtures and additions and alterations to such Lots and Residences made by the current or prior Owners. In the event there is overlapping coverage between an Owner's insurance and the Association's insurance, the Owner's insurance shall be considered as primary insurance and the Association's insurance shall be considered excess insurance. An Owner may carry whatever personal liability and property damage insurance with respect to his or her Lot and Residence that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

#### **Section 9.7 Insurance Trustee**

If a dispute arises as to allocation or use of insurance proceeds worth one million dollars (\$1,000,000.00) or more, said insurance proceeds shall be paid over to an insurance trustee. The insurance trustee shall hold the funds in trust and expend the funds for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said insurance trustee shall be a commercial bank or other institution with trust powers within the Bay Area that agrees in writing to accept such trust.

#### **Section 9.8 Adjustment of Losses**

The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 9.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.



### **Section 9.9 Distribution to Mortgagees**

Subject to the provisions of Article XIII, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

### **Section 9.10 Deductibles**

(a) Owner Responsible for Loss. Except with respect to insurance for earthquake damage, an Owner responsible for causing an insurable loss (by either the Owner's acts and/or the acts of Owner's

Family members, contract purchasers, tenants, guests, or invitees or as a result of a defective condition within the Owner's Lot), shall be obligated to contribute the Owner's proportional share of the insurance deductible, if any, corresponding to the insurance covering the loss. The proportional share of each Owner responsible for causing the insurable loss under this Section 9.10(a) shall be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of all Owners responsible for causing the insurable loss.

(b) No Owner Responsible for Loss. If the insurable loss is not caused by the act or omission of any Owner (or the acts or omissions of the Owner's Family members, contract purchasers, tenants, guests, or invitees), the deductible shall be paid by each Owner in proportion to the amount the insurable loss suffered by his or her Lot bears to the total insurable loss of all Owners resulting from the same event.

(c) Earthquake Damage. With respect to a loss covered by earthquake insurance, all Owners shall be obligated to contribute his or her proportionate share of the insurance deductible whether or not that Owner's Lot and/or Building suffered damage. The cost of such deductible shall be allocated equally among all the Lots.

(d) Failure to Pay Deductible. If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under Subsection (a), (b) or (c) of this Section 9.10, any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner, which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

(e) Objection to Payment of Deductible. Within fifteen (15) days of the date that the notice to the Owner of his or her share of the liability is mailed, any Owner may contest the amount of his or her proportionate liability under Subsections (a), (b) or (c) of this Section 9.10 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board shall set a hearing date on the matter. The Owner(s) contesting liability may be represented by counsel at this hearing. Following such hearing, the Board shall give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision shall be final and binding.



### **Section 9.11 Insurance Claims**

In order to keep the Association's insurance premiums (and claim history) as low as possible and, thereby maximize the Association's ability to obtain reasonably priced insurance, the following provisions shall apply to property damage claims:

(a) **Damage Due to Owner's Acts or Conduct.** If the damage or loss is caused by an Owner's acts or omissions (or the acts or omissions of Owner's Family members, contract purchasers, tenants, guests or invitees) or to a condition originating within the Owner's Lot and that Owner (or tenant) has one (1) or more insurance policies, the Owner's (and/or tenant's) insurance policy (or policies) shall be primary. The Association's insurance shall be excess insurance, not contributory, to that Owner's (and/or tenant's) insurance policy or policies. The damage or loss claim must be tendered to that Owner's (and/or tenant's) insurance policy or policies and that Owner's (and/or tenant's) insurer(s) must provide a written denial of coverage before the damage or loss claim can be tendered to the Association's insurance.

(b) **Damage Due to Association's Intentional Acts or Negligence.** If the damage or loss is caused by the Association's intentional acts and/or active negligence, the damage or loss claim can be tendered to the Association's insurance policy without any pre-requisite of tendering to the Owner's (or tenant's) insurance first.

(c) **Damage to a Lot/Residence or Its Contents.** If: (1) the damage or loss does not fall within either Subsection (a) or Subsection (b) above; (2) the damage or loss is to an Owner's Residence (and/or the contents/personal property within said Residence); and (3) the Owner (and/or tenant) with the damage or loss has insurance, the Owner's (or tenant's) insurance shall be primary. The Association's insurance shall be excess insurance, not contributory, to that Owner's (or tenant's) policy. The damage or loss claim must be tendered to that Owner's (and/or tenant's) insurance and that Owner's (and/or tenant's) insurer(s) must provide a written denial of coverage before the damage or loss claim can be tendered to the Association's insurance.

(d) **Increase in Insurance Premium Due to Claim.** If a claim is made to the Association's insurer for damage caused by the act or omission of an Owner or such Owner's Family members, contract purchasers, tenants, guests or invitees or by a condition originating within the Owner's Lot for which the Owner is responsible, and such claim results in an increased insurance premium for the Association, the Owner shall be responsible for payment of the amount of such increase for a period of no more than three

(3) years. A Special Individual Assessment shall be levied against the Owner for such liability, after the notice and hearing required in Article XII of this Declaration. The Board may waive the liability imposed by this subsection only for good cause shown by the Owner.

### **ARTICLE X: DAMAGE OR DESTRUCTION**



### **Section 10.1 General Provisions**

This Article X shall apply in the event substantial portions of the Common Area or Common Facilities or those portions of the Lots that the Association is required to maintain, repair and replace are substantially damaged or destroyed as a result of fire, earthquake or other casualty. In such event, the Association shall have exclusive authority to negotiate losses/insurance proceeds covering such losses.

(a) Use of Separate Trust Account. All insurance proceeds (except insurance procured by Owner(s) pursuant to Section 9.5), shall be held by the Association in a separate trust account in trust for the Association, the Owner(s) and their Mortgagees as their respective interests may appear to be in accordance with the terms and provisions of any applicable Mortgage.

(b) Power to Contract with Insurance Trustee. Should a controversy arise as to the disbursement of insurance proceeds and the amount in controversy is over one million dollars (\$1,000,000.00), the Board is authorized to enter into an agreement with an Insurance Trustee pursuant to Section 9.6 of this Declaration, relating to Insurance Trustee's powers, duties, and reasonable compensation.

(c) Determination of Adequate Insurance. The Board shall, within sixty (60) days of the casualty event, meet with general contractors, architects and/or other construction professionals to make a preliminary determination if the proceeds from available insurance will probably be sufficient to fund the necessary repairs and reconstruction and shall report its determination to the Members and Eligible First Mortgagees in writing. Thereafter the Board shall diligently attempt to reach a final settlement and adjustment of its insurance claims with the insurers. The Association shall make good faith efforts to keep interested Owners and Eligible First Mortgagees apprised as to the status of negotiations.

(d) Insurable Losses to Individual Lots. If one or more residential Lots suffers damage covered by the Association's property insurance, the Board may, in its discretion, pay the insurance proceeds to the Lot Owner and the Lot Owner shall be responsible for repair of the Lot and residence. All such repairs shall be completed within one year and shall be in accordance with the requirements of this Declaration, including Article VIII. Other than the routine maintenance and repairs required under Section 6.1 of this Declaration, the Association shall not be responsible for repair of damage or destruction to any portion of a Lot or Residence not covered by the Association's insurance.

### **Section 10.2 Repair and Reconstruction if Adequate Insurance is Available**

(a) Board's Authority to Contract for Repairs. Upon a determination that insurance proceeds will be adequate, the Board shall have the authority, without a vote of the Members, to enter into written contracts with general contractors, design



professionals and other construction professionals for the repair and reconstruction of damaged or destroyed property covered by the insurance, pursuant to Section 10.5 below.

(b) Funding of Repair and Reconstruction. The Board may borrow from the Reserve Account to fund any repair or reconstruction covered by insurance, so as not to delay reconstruction. Any such borrowed funds shall be immediately replaced upon receipt by the Association of the insurance proceeds.

### **Section 10.3 Minor Deficiency in Insurance Proceeds**

(a) Reconstruction Unless Vetoed by Members. If the available proceeds from the insurance maintained pursuant to Article IX are sufficient, after payment of any insured losses to individual Lots, to cover at least seventy-five percent (75%) of the anticipated costs of repair and reconstruction of the Common Area and the anticipated costs of repair and reconstruction do not exceed available insurance proceeds by more than One Million Dollars (\$1,000,000), the damaged portions of the Common Area shall be rebuilt unless, within ninety (90) days from the date of destruction, sixty-six and two-thirds percent (66-2/3rds %) of the total voting power of the Association determine that such repair and reconstruction shall not take place. Reconstruction and repair shall proceed as set forth in Section 10.5 below.

(b) Special Assessment. Any sums in excess of available insurance proceeds required to repair or rebuild the Common Area and Common Facilities under this section shall be obtained by Special Assessment levied equally against all Lots in the Development.

(c) Advancement of Special Assessment. If any Member fails to pay, within thirty (30) days of the levy, the Special Assessment levied against that Member's Lot, the Board may advance (without relieving the Member(s) or the Members' Lot(s) from liability therefor) an amount equal to the unpaid assessments.

### **Section 10.4 Major Deficiency in Insurance Proceeds**

If the deficiency in insurance proceeds exceeds the limits set forth in Section 10.3 above, this Section shall apply. Within ninety (90) days of the casualty or event causing the damage, the Board shall call a Special Meeting of Members or distribute a written ballot (see Section 3.4 of the Bylaws) for the purpose of deciding upon the appropriate course of action. At the meeting or through the written ballot in lieu of a meeting, the Members shall decide whether to proceed with reconstruction of the Common Area and Common Facilities. A vote in excess of sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Association shall be required to determine that repair and reconstruction of the Common Area and Common Facilities will not take place. If the Members vote not to repair or rebuild the Common Area and Common Facilities, the Association shall be authorized to remove any debris from the Development and to clean up the area of damage to the extent necessary to make it safe, sanitary and presentable.



### **Section 10.5 Repairs and Reconstruction**

This section shall apply if repair and reconstruction is authorized under one of the provisions of this Article.

(a) Board's Authority to Contract. The Board shall have the sole authority to contract for repair and reconstruction of the Common Area and Common Facilities under this Article and to hire appropriate contractors, design professionals and other necessary consultants for the work. The Board shall award the contract(s) for repair and reconstruction to the lowest responsible bidder, or to such bidder as the Board determines is more favorable for the Association. The Board shall make every reasonable effort to execute

the necessary contracts and complete the work within one year of the casualty event. It shall be the obligation of the Board to take all steps necessary to assure the commencement and the completion of authorized repairs and reconstruction occur at the earliest possible date.

(b) Licensed Contractors. Only contractors duly licensed in the State of California shall be employed by the Association for the work.

(c) Scope of Repairs and Reconstruction. The damaged or destroyed improvements shall be rebuilt to the condition existing immediately prior to the event causing the loss, subject to current building codes and ordinances, unless the Board, Owners and Eligible First Mortgagees agree upon a different scope of work.

### **Section 10.6 Emergency Repairs**

Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as the Board may deem necessary or desirable under the circumstances, and the Board may charge the maintenance fund for the costs thereof where such repairs are done prior to settlement of insurance claims.

## **ARTICLE XI: CONDEMNATION**

### **Section 11.1 Sale by Unanimous Consent or Taking**

The Board or a trustee appointed by the Board to act on behalf of the Association shall represent all of the Owners in any condemnation proceeding, negotiations, settlements and/or agreements. Each Owner by accepting a deed to a Lot in the Development hereby grants the Board or its appointed trustee an irrevocable power of attorney to act on behalf of the Association and all Owners in any condemnation or proposed/threatened condemnation.

If an action for condemnation of a portion or all of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and Eligible First





Mortgagees, the Development, or a portion thereof, may be sold and conveyed to the condemning authority by the Board or the Association's appointed trustee for a price deemed fair and equitable by the Board.

If the requisite number of Owners or Eligible First Mortgagees do not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

### **Section 11.2 Distribution of Sale Proceeds or Condemnation Award**

(a) Total Sale or Taking. A total sale or taking of the Development means a sale or taking that

(i) renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (ii) renders the Development as a whole uneconomical as determined by the vote or written consent of fifty-one percent (51%) of those Owners and their respective Eligible First Mortgagees whose Lots will remain habitable after the taking.

Any determination that a sale or taking is total must be made before the proceeds from said sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees, as their respective interests may appear, in the proportion that the fair market value of each Lot bears to the fair market value of all Lots in the Development. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an independent licensed real estate appraiser selected by the Association, who shall be a member of the Society of Real estate Appraisers or other nationally recognized appraiser organization and shall apply its or such other organization's standards in determining the fair market values of the Lots.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking, as determined in Subsection 11.2(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

(i) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Lots in the Development whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser (pursuant to Section 11.2(a)), less such Owners' share of expenses paid



pursuant to Subsection 11.2(b)(i) (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots).

After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map, if any, and this Declaration to eliminate from the Development the Lots so sold or taken; then

(iii) To any remaining Owner(s) and to their Mortgagees, as their interests may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to Section 11.2(a)), an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to Section 11.2(a)).

### **Section 11.3 Appraiser**

The costs of such appraisals shall be paid from the condemnation/sale proceeds as an expense of the Association.

## **ARTICLE XII: BREACH & DEFAULT**

### **Section 12.1 Remedy at Law Inadequate**

The provisions of the Declaration, the Bylaws, the Association Rules and/or Resolutions of the Board, as the same may be adopted or amended from time to time, shall constitute enforceable servitudes which shall inure to and bind each Owner, Owner's Family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to strictly comply with any provision of the Governing Documents shall be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.



Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Association's other Governing Documents is inadequate, and injunctive or declaratory relief, or other forms of equitable relief shall be available in addition to monetary damages as a remedy for such breach, default or violation.

### **Section 12.2 Nuisance**

Without limiting the generality of Section 12.1, the result of every act or omission whereby any covenant contained in this Declaration or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies that may be available, such nuisance may be abated or enjoined by the Association, its Officers, the Board of Directors and/or any Owner.

Further, every remedy against nuisance, either public or private, shall be applicable against every such act or omission; provided, however, the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

### **Section 12.3 Violation of Law**

Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.

### **Section 12.4 Cumulative Remedies**

The respective rights and remedies provided by this Declaration or by law shall be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

### **Section 12.5 Failure Not a 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 and/or the Association's Governing Documents 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 12.6 Rights and Remedies of the Association**

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, contract purchasers, employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association. The Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 12.6. The initiation of legal action shall be subject to Section 12.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board.

If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 1354 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing pursuant to Subsections 12.6(f) and (g), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member shall be deemed to be a Member not in good standing until such time as the Board shall determine in writing that the violation that resulted in the Board's determination that the Member was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member of the Association in good standing.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and shall be enforceable as a Special Individual Assessment pursuant to Section 5.4.



(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) "Meet and Confer" Requirement. In the event of a dispute between the Association and a Member concerning an alleged violation of the Governing Documents, either party may request in writing to meet with the other party to discuss the dispute. The Association shall comply with any request by a Member by notifying the requesting Member of the date and time for such a meeting within thirty (30) days of receipt of the written request. If such a request is made by the Association to a Member, the Member may, but is not required to, respond in writing within ten (10) days agreeing to the requested meeting on the terms set forth in the Association's request. The meeting shall be attended by the Board or the Board's designated representative and the requesting Member. If the meeting is not attended by the entire Board, the Member may appeal any resolution resulting from the meeting to the entire Board. Any agreement between the Association and the Member as a result of such a meeting shall be reduced to writing and signed by the Association and the Member. Once signed by both parties, such agreement shall become final, binding and unappealable. The Association may comply with any "Meet and Confer" request by a Member pursuant to this Subsection by a disciplinary hearing pursuant to Subsection 12.6(f) below. However, if the meeting is to be in conjunction with a disciplinary hearing, the notice required by Subsection 12.6(g) must be given to the Member.

(e) Limitations of Disciplinary Rights.

(i) Loss of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or Owner's Family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of A) the judgment of a court of competent jurisdiction, B) a decision arising out of arbitration, C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 12.6(f) and (g).

(ii) Liens Against Member's Lot. Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, an assessment imposed by the Association as a means of reimbursing the Association for costs



incurred by the Association in the repair of damage to common areas and facilities for which the Member and/or the member's Family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Lot enforceable by the sale of the Lot and Improvements under Civil Code Sections 2924, 2924b, and 2924c.

(f) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this Article XII unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 12.6(h). However, this Subsection shall not prevent the Board from taking emergency action (such as towing of vehicles) to eliminate an immediate threat to the health or safety of residents or a nuisance causing substantial interference with the property rights of other residents. The required disciplinary hearing shall be scheduled as soon as practicable after any such emergency action has been taken, and if it is determined that such action was unnecessary or improper, the Association shall compensate the Member for any costs incurred as a result of such action. The Association Rules may specify those violations justifying emergency action pursuant to this subsection.

(g) Notices. Any notice of a disciplinary hearing pursuant to Subsection 12.6(f) above shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association. The Association's notice of a disciplinary hearing shall be delivered to the Member at least ten (10) days prior to any hearing. Notice of the Board's action as a result of the disciplinary hearing must be delivered to the Member within fifteen (15) days after the Board's decision.

(h) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code Section 1354 or comparable superseding statute.

### **Section 12.7 Court Actions; ADR**

Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. As long as Civil Code Sections 1369.510 1369.590 (or comparable superseding statutes requiring alternative dispute resolution) are in force, this Section 12.7 shall control the initiation of a legal action by the Association and/or its



Members. This Section 12.7 shall automatically be repealed from this Declaration should the above Civil Code Sections (or comparable superseding statutes) be repealed by the California Legislature.

(a) Alternative Dispute Resolution. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either of those actions coupled with a claim for monetary damages not in excess of \$5000), the Association and/or Members shall first comply with the provisions of Civil Code Sections 1369.510 - 1369.590, or comparable superseding statutes, relating to alternative dispute resolution. The Board shall have discretion as to the form of ADR that shall be proposed to a Member to satisfy the requirements of this Subsection and Civil Code Sections 1369.510 -1369.590.

(b) Actions Relating to Assessments. Disputes related to Association Assessments are expressly exempted from the provisions of this Section 12.7 except to the extent ADR is required by California law as part of the lien and foreclosure process.

(c) Small Claims Court Actions. If any claim, dispute or controversy involves a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of the alternative dispute resolution procedures required by this Section 12.7.

(d) Statement and Admissions During ADR. Unless mutually agreed to in writing by all parties to the dispute, evidence of anything said or of any admissions made in the course of the alternative dispute resolution process shall not be admissible into evidence in any legal proceeding. Testimony referring to such statement or admission shall not be admissible. Nor shall disclosure of any such statement or admission be compelled in any civil action. Documents prepared for the purpose of, in the course of or pursuant to alternative dispute resolution procedure shall not be admissible into evidence and disclosure of such documents may not be compelled in any legal proceeding.

### **Section 12.8 Joint and Several Liability of Co-Owners**

If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration shall be joint and several.

### **Section 12.9 Costs and Attorneys' Fees**

In the event that the Association takes any action because of any alleged breach or default of any Member or other party hereto under the Association's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association shall be entitled to recover from that Member (or other party) the costs, including attorneys' fees, the Association incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and



attorneys' fees shall include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

In the event an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Association's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superceding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

### **ARTICLE XIII: PROTECTION OF MORTGAGES**

#### **Section 13.1 Mortgage Permitted**

Any Owner may encumber the Owner's Lot with a mortgage.

#### **Section 13.2 Subordination**

Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Development, or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the holder of the first mortgage expressly subordinates his interest in writing, to such lien. All taxes, assessments and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Lot(s) there charged and not to the Development as a whole.

#### **Section 13.3 Restrictions on Certain Changes/Amendments**

Unless after receiving written notice, fifty-one percent (51%) of the Eligible First Mortgagees holding mortgages on Lots have given their prior written approval (one vote for each Lot secured by a Mortgage), neither the Association nor the Owners:

(a) shall be entitled to effect any material amendment to the Governing Documents. As used in this Section, the term "any material amendment" means amendments to those provisions that establish, provide for and/or govern any of the following subjects:

(i) The pro rata interest or obligations of any Lot/Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Lot in the Common Area;





(ii) The fundamental purpose for which the Development was created. (i.e., change from residential use to a different use);  
and

(iii) Any provision that is specifically for the benefit of First Mortgagees, or specifically confers rights on First Mortgagees.

An addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, for clarification, or to comply with changes in the legal requirements applicable to the Association and its members.

(b) shall be entitled to:

(i) Seek to abandon or terminate the Planned Development, except for abandonment provided by statute in case of substantial loss to the Lots and Common Area;

(ii) Partition or Subdivide any Lot; and

(iii) Use hazard insurance proceeds for losses to Lots or Common Area in the Development for other than the repair, replacement or restriction of Improvements, except as provided by statute in case of substantial loss to the Lots or Common Area of the Development.

A Mortgagee who receives a written request to approve any of the above acts, including but not limited to, additions or amendments to the Governing Documents and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

#### **Section 13.4 Right to Examine Books and Records**

Eligible First Mortgagees can examine the books and records of the Association or the Planned Development and can require the submission of financial data concerning the Association or the Planned Development, including annual audit or review reports, if any, and operating statements as furnished to the Owner.

Any Owner, at the expense of such Owner, or the holders of fifty-one percent (51%) or more of First Mortgagees, at the First Mortgagees' expense, may request at anytime an independent audit of the Association.

#### **Section 13.5 Distribution of Insurance and Condemnation Proceeds**

Notwithstanding any other provision of this Declaration, no Lot Owner or any other party, shall have priority over any right of First Mortgagees of Lots pursuant to their mortgages in case of a distribution of insurance proceeds or condemnation awards for losses to (or a taking of) Lots or Common Area. Any such distribution shall be made pursuant to the terms and provisions of the applicable Mortgage. Any provision to the contrary, in this Declaration or in the Bylaws or other



documents relating to the Development, is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the first mortgagees, as their interests may appear.

### **Section 13.6. Notices to Eligible First Mortgagees**

The Association shall give written notice to all Eligible First Mortgagees of any lapse (or cancellation) of any insurance policy or fidelity bond maintained by the Association that is not renewed, restored or replaced within a short period of time or of any significant change to the coverage, limits and/or deductible for any of those policies or bonds issued to the Association.

The Association shall also give written notice to those Eligible First Mortgagee(s) who hold the mortgage for any affected Lot of any condemnation loss or any casualty loss to any Lot covered by a mortgage, if such loss exceeds \$50,000.00, or on any loss to the Common Area, if such loss exceeds \$500,000.00.

### **Section 13.7 Effect of Breach**

If any Lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to effect or impair the lien of the first mortgage. On foreclosure of the First Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the First Mortgage, with the foreclosure-purchaser taking title to the Lot free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale.

On taking title to the Lot, the foreclosure-purchaser shall be bound to all covenants, conditions and restrictions contained in the Governing Documents, but shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot.

Nothing in this Section shall be construed to release any prior Owner from the Owner's obligation to pay for any assessment levied pursuant to this Declaration.

### **Section 13.8 Non-Curable Breach**

Any mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

### **Section 13.9 Payment by Mortgagees**



Mortgagees of Lots may, jointly or singularly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association.

This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees. Upon the request of any Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Section 13.9.

#### **Section 13.10 Loan to Facilitate**

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

#### **Section 13.11 Appearance at Meetings**

Because of its financial interest in the development, any Eligible First Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of the Governing Documents that have not been corrected or made the subject of remedial proceedings or assessments and/or other matters of concern to the Mortgagee.

#### **Section 13.12 Right to Furnish Information**

Any Mortgagee can furnish information to the Board concerning the status of any mortgage.

#### **Section 13.13 Inapplicability of Right of First Refusal to Mortgagee**

No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall be granted to the Association without the consent of any Eligible First Mortgagee of the Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot, whether voluntary or involuntary, to a mortgagee that acquires title to the Lot pursuant to the remedies provided in its mortgage or deed or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Further, no such right shall impair the rights of a First Mortgagee to:

(a) Foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or



- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or
- (c) Sell or lease a Lot acquired by the Mortgagee.

### **Section 13.14 Amendments to Conform with Mortgagee Requirements**

It is the intent of the Association that this Declaration and the Articles and Bylaws of the Association, and the Development in general, meet all reasonable requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Lot in the development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veterans' Administration. The Board and each Owner shall take any action or shall adopt any resolutions necessary to conform the Governing Documents and/or the Development to the reasonable requirements of any of said entities or agencies. Each Owner, by the acceptance of a deed to a Lot, grants to the Board an irrevocable power of attorney to act as attorney-in-fact for such purpose.

The provisions of this Declaration and the Association's other Governing Documents shall be liberally interpreted so as to comply with the reasonable requirements of institutional lenders, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

## **ARTICLE XIV: AMENDMENT OF DECLARATION**

### **Section 14.1 Amendment in General**

This Declaration may be amended or revoked in any respect by the vote or assent of Members representing at least fifty-one percent (51%) of all eligible Members. (See Section 3.3 of the Bylaws which defines eligible Members).

Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision.

### **Section 14.2 Effective Date of Amendments**

Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Alameda County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 14.1, above, have been duly met.

Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

### **Section 14.3 Reliance on Amendments**



Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XV: GENERAL PROVISIONS**

### **Section 15.1 Effective Date**

This Declaration shall become effective upon its recordation in the Official Records of the County of Alameda, State of California.

### **Section 15.2 Notices**

(a) Mailing as Alternative to Personal Service. Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows: to an Owner at the Owner's Lot or to such other address as the Owner by designate from time to time in writing to the Association; to the Association at the principal office of the Association Manager or to such other address as the Board may from time to time designate in writing to the Association Members; and to Eligible First Mortgagees at the most recent address of the Eligible First Mortgagee provided in writing to the Association. Any mailing by the Association based upon the information in its records at the time of the mailing shall be deemed effective for any notice required under the Governing Documents.

(b) Personal Service Upon Co-Owners & Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership that is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation that is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

(c) Deemed Delivered. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail. All notices and demands served by personal delivery are delivered upon service.

### **Section 15.3. No Public Rights in Development**

Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

### **Section 15.4 Construction of Declaration**



(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration.

Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision which shall remain in full force and effect.

(c) Singular Includes Plural/Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions, titles or headings used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Conflicts. In the event of any conflict between any of the provisions of this Article XV and any other provisions of this Declaration, the provisions of this Article shall control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration shall control. Further, neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration shall control.

(f) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

### **Section 15.5 Power of Attorney**

To the extent necessary to carry out and enforce the provisions of this Declaration and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

### **Section 15.6 Term of Declaration**



The provisions of this Declaration shall be effective to bind the Owners, the Association, its Board of Directors, its officers and agents and their successors in interest for a period of 60 years from the date this Declaration is recorded. After the expiration of this term, the term of this Declaration shall be automatically extended for successive periods of 10 years each, unless within 6 months before the expiration of the initial 60-year term established by this Section, or any 10-year extension period, a recordable written instrument approved by Owners entitled to vote and holding a majority of the voting power of the Association (or such other majority of Owners as may be required by California law) terminating the effectiveness of this Declaration is recorded.

**CERTIFICATION**

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Members (the Members consisting of at least seventy-five percent of the total voting power held by the membership of the Association).

Dated: BALLENA BAY TOWNHOUSE ASSOCIATION NUMBER 1

By: \_\_\_\_\_ Jay Cherrie, President

By: \_\_\_\_\_ Eric Vaernes, Secretary

STATE OF CALIFORNIA COUNTY OF ) ) ss.

On , before me, , Notary Public, personally appeared

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

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.

Notary's Signature (SEAL) STATE OF CALIFORNIA ) COUNTY OF ) ss.

On , before me, , Notary Public, personally appeared



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

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.

Notary's Signature (SEAL)

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**EXHIBIT A - Property Description**

1. All that certain real property situated in the City of Alameda, County of Alameda, State of California, particularly described as follows:

Lots 1 to 28, inclusive, of Block 1;

Lot A of Block 1;

Lots 1 to 16, inclusive, of Block 3;

Lot A of Block 3;

of Tract 3011, Ballena Bay Community, according to the map thereof filed September 13, 1968, in the office of the County Recorder of said Alameda County, and of record in Map Book 59, pages 6 to 9, inclusive; and the Amendment thereto entitled "Amended Map of Block 3, Tract 3011, Ballena Bay Community, Alameda, California" filed on April 10, 1969, in the office of the County Recorder of said Alameda County in Map Book 59, page 93; and the Amendment thereto entitled "Amended Map of Block 1, Tract 3011, Ballena Bay Community, Alameda, California", which was filed on September 11, 1969 in the office of the County Recorder of said Alameda County in Map Book 63, page 41.

2. All that certain real property situated in the City of Alameda, County of Alameda, State of California, particularly described as follows: Lots 1 to 24, inclusive, of Block 2; Lot A of Block 2; Lots 1 to 12, inclusive of Block 3;

Lot A of Block 3; of Tract 3105, Ballena Bay Community, according to the map thereof filed February 26, 1970 in the office of the County Recorder of said Alameda County, and of record in Map Book 63, pages 79 through 82, inclusive.





**EXHIBIT B - Boat Docks - permissible Boat Lengths**

