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AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

ALTAMIRA MANAGEMENT ASSOCIATION NO. 1
A Planned Development

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AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS

FOR

ALTAMIRA MANAGEMENT ASSOCIATION NO.1
A Planned Development

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereafter written, by Altamira Management Association No. 1, a California nonprofit corporation ("Association"), with reference to the following Recitals which shall be deemed to be part of and incorporated into this Declaration by this reference.

RECITALS

A. Association is a corporation whose Members are the Owners of all the residential Lots within that certain real property in the City of Carlsbad, County of San Diego, State of California, more particularly described below (hereafter "Property"):

Lots 1 through 206, inclusive, of Carlsbad Tract 72-2.1 according to Map thereof No. 7303 filed in the Office of the County Recorder of San Diego County, California, on June 9, 1972; and

Lots 207 through 341, inclusive, of Carlsbad Tract 72-2.2 in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 7476, filed November 6, 1972 in Official Records of San Diego County, California.

B. The Property was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and three hundred and twenty-six (326) Residential Lots (hereafter "Separate Interests") and related Common Areas.

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

1. The Declaration of Covenants, Conditions, and Restrictions Recorded on July 21, 1972 as Document No. 189485;
2. The Amendment to Declaration of Covenants, Condition, and Restrictions Recorded on November 8, 1972 as Document No. 299498;
3. The Certificate of Annexation Recorded on January 16, 1973 as Document No. 73-013911;
4. and any other amendments or documents that may appear of Record, all in the Official Records of the County Recorder of San Diego County, hereinafter referred to together as "Original Declaration," unless the context clearly indicates otherwise.

D. Association now desires to amend and restate the Original Declaration and replace it in its entirety with this Amended and Restated Declaration of Restrictions ("Declaration"). Association further desires that, upon Recording this Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, charges and other terms and provisions contained herein, and that this Declaration take the place of and relate back in time to the Recording of the Original Declaration.

E. The Original Declaration, in Article V, Section 29, Amendment and Term provides that it may be amended at any time by a written instrument executed by at least 75% of the Lot Owners.

F. Under California Civil Code Section 1355 an amendment is effective after (1) approval of the percentage of Owners required by the Governing Documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the Association President if no Officer has been designated in the Original Declaration for such purpose, and (3) the writing has been Recorded in the County in which the Property is located.

G. The undersigned President and Secretary of the Association certify that, to the best of their knowledge and belief, the amendment has been properly approved, and this Declaration is being Recorded to give effect to this Amendment.

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

ARTICLE 1 - DEFINITIONS

Unless otherwise defined in this Declaration, capitalized terms or words used in this Declaration shall have the definitions found in Exhibit A, attached hereto and incorporated herein by this reference, or in the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*, hereafter "Act"). Words not defined in the Declaration or in the Act shall be understood in their ordinary and popular sense, as determined by the context in which they are used, unless the context indicates that the term or word is a defined term which was inadvertently not capitalized.

Statutes or administrative regulations that are shown in brackets at the beginning of a section or paragraph in this Declaration are intended to show that the respective section or paragraph is based on the particular statute or administrative regulation referred to in the brackets. Unless otherwise noted, all references are to statutes and administrative regulations of the State of California. Any issues not addressed expressly by the Governing Documents of the Association shall be controlled by relevant provisions of the Act and the California Corporations Code and by judicial interpretations of them, whether the Association is incorporated or not.

ARTICLE 2 - USE RESTRICTIONS AND COVENANTS

2.1 *General.* The use and enjoyment of the Development by Owners and their tenants, guests, invitees or any other Person deriving rights from such Owner, shall be subject to the covenants, restrictions and other terms contained in the Governing Documents. Each such Person shall comply with the provisions of the Governing Documents and be subject to any enforcement actions in the event of violations. As more fully set forth in Section 7.1, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

The acceptance by any Person of a deed, lease or other instrument of transfer, to any real property against which this Declaration has been Recorded, shall be deemed an acceptance of all of all the terms, restrictions and other provisions contained herein. The burden of and obligation to perform in accordance with a sale of any Separate Interest pursuant to such deed or other instrument of transfer shall be deemed an agreement by such Person that Association and each of the Owners are entitled to enforce all of such restrictions.

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

- 2.2.1 The Association shall have an easement in, to, and throughout the Common Area and the Improvements thereon to perform its duties and exercise its powers;
- 2.2.2 [Civil Code §1359] Except as provided in this Declaration, or by Law, there shall be no judicial partition of the Common Area, nor shall any Person acquiring an interest in all or any part of the Development seek any judicial partition;
- 2.2.3 Subject to the provisions of this Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance or other instrument of transfer of any Separate Interest, whether or not expressed in such deed of conveyance or other instrument of transfer. However, these rights shall not interfere with, and shall be subordinate to, any Owner's right to use and occupy Exclusive Use Common Area;
- 2.2.4 The Owners' use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, including the right of the Association to:
 - (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area, the Development and its amenities, facilities, and equipment;
 - (b) Place reasonable limits on the number of Persons using the Common Area or Improvements within the Common Area for health and safety considerations;
 - (c) Remove any vehicle within the Development parked in violation of this Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto;
 - (d) Suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents;
 - (e) Cause the construction of additional Improvements in the Common Area, or to cause the alteration, maintenance, repair, replacement or removal of existing Improvements on the Common Area;

- (f) Grant, dedicate, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area, including a grant or consent to allow one or more Owners to use portions of the Common Area exclusively subject to the Governing Documents as provided in Section ?;
- (g) Approve any proposed alteration of or modification to the Common Area or any Separate Interest;
- (h) Dedicate the Common Area to a public authority following approval by two-thirds (2/3) of the Members.

2.2.5 The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining utilities and services in the Common Area, or other purposes reasonably related to the operation and maintenance of the Development, and each Owner, in accepting his or her deed to the Separate Interest, expressly consents to such easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Separate Interest without the approval of the affected Owner;

2.2.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Separate Interest to a contract purchaser or who has leased or rented the Separate Interest shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. Where the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the Governing Documents. Thus, any delegated rights are subject to suspension following Notice and Hearing procedures;

2.2.7 [Civil Code §§1351(i)(2) & 1364(f)] All internal and external telephone wiring designed to serve a single Separate Interest, but located outside the boundaries of the Separate Interest, is allocated exclusively to that Separate Interest. The Owner of the Separate Interest shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

2.2.8 All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Separate Interests, streets, and Common Area. No drying yards shall be permitted unless screened from all views exterior to the Lot on which the drying yard is located either by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Architectural Committee. All rubbish, trash or garbage shall be regularly removed from each Separate Interest and shall not be allowed to accumulate thereon or on the adjacent Common Area. No fences, hedges or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the Buildings located on the Property, or as provided by the

Board. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area.

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

- 2.3.1 Attempt to subdivide or partition a Separate Interest without obtaining the prior written approval of the Association and the Lenders as provided in Section 11.5 or attempt to sell, assign, lease or convey the Owner's rights or interest in the Common Area separate and apart from his or her Separate Interest;
- 2.3.2 Occupy or use a Separate Interest, or permit all or any part of a Separate Interest to be occupied or used, without Board approval, for any purpose other than as a private residence for a single household unit not to exceed one (1) story in height and a private garage for not more than one (1) car.
- 2.3.3 Use any portion of a Separate Interest or the Common Area for any commercial purpose, except as otherwise permitted in this Declaration. However, a Separate Interest may be used for an in-home business that is compatible with and in accordance with the existing zoning relating to the Property, subject to the prior written approval of the Board. The Board shall not unreasonably withhold its consent for any such in-home business, so long as such use will not result in increased traffic in the development, an interference with parking by Residents, or cause any similar impact that unreasonably interferes with the residential character of the Property.
- 2.3.4 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents;
- 2.3.5 Perform any act or keep anything on or in any Separate Interest or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Separate Interest or in the Common Area that would result in the cancellation of insurance on any Separate Interest or on any part of the Common Area or that would violate any Law;
- 2.3.6 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or on any Separate Interest; provided, however, that reasonable amounts of these liquids, substances or materials may be placed in appropriate containers and properly stored;
- 2.3.7 Commit any waste in the Common Area, or engage in any noxious or offensive activity in any part of the Development, or engage in any activity that unreasonably annoys or offends any Owner or Resident or that unreasonably obstructs or interferes with the rights of any Owner or Resident, or do any act that unreasonably threatens the health, safety or welfare of other Residents of the Development, or do anything that would constitute a nuisance or that would violate any Law;

2.3.8 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board; and

2.3.9 Keep or maintain any fixture, personal property or other object upon any Separate Interest, including patios, which interferes with the enjoyment of adjacent Separate Interests, including patios, or which violates any restriction contained in the Governing Documents or violates any Rules duly adopted by the Board.

2.4 **Parking.** The Board, in its discretion, may adopt reasonable Rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area. Any vehicles violating the Rules may be removed as provided in Section 5.7.5. No garage apron for the parking of motor vehicles on any Lot and no other spaces which are designated for the parking of motor vehicles on any Lot or on the Common Area shall be converted to any other use.

2.5 **Leases.** Nothing in this Declaration shall prevent an Owner from leasing or renting his or her Separate Interest, provided that it is not for transient or hotel purposes, is for a period of at least thirty (30) days, is in writing, and is expressly subject to the Governing Documents. Any agreement for the leasing or rental of a Separate Interest (hereinafter "Lease") shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration and other Governing Documents of the Association. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a material default under the Lease. Any Owner who shall lease his Separate Interest shall be responsible for assuring compliance by such Owner's lessee with this Declaration and other Governing Documents of the Association. Failure by an Owner to take legal action, including the commencement of proceedings in unlawful detainer against such Owner's lessee who is in violation of this Declaration or other Governing Documents of the Association within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association, through the Board, to take any and all such action, including the commencement of proceedings in unlawful detainer on behalf of such Owner or the Association against such Owner's lessee. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Assessment against such Owner and the Owner's Separate Interest for all such expenses incurred by the Association. If such an Assessment is not paid within thirty (30) days after the due date, the Board may resort to all remedies of the Association for the collection thereof including those set forth in Article 6 hereof. No Owner may lease less than the entire Separate Interest. In addition, no Separate Interest shall be leased for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days or any rental whatsoever, if the occupants thereof are provided with customary hotel services such as room service for food and beverages, maid services, the furnishing of laundry and linen or bellboy service.

2.6 **Restrictions on Pets.** No Owners may raise or keep animals for commercial purposes. Excluding Seeing Eye or Aid Animals, no more than a total of (3) usual or ordinary dogs or cats or other household pets (exclusive of caged birds) may be kept in any Separate Interest without the prior written consent of the Board [Carlsbad City Code §21.53.084]. No turkeys, geese, chickens, ducks, pigeons, or fowl of any kind, or goats, rabbits, hares, horses, or animals usually termed "farm animals," shall be kept or allowed to be kept on any of said Lots. Exotic pets, such as, but not limited to, snakes, reptiles, simian, canine, and similar animals, feral or non-feral, may not be housed or kept in any area of Owner's Separate Interest that would cause inconvenience to other Owners or constitute a health or safety concern or be illegal. Notwithstanding the forgoing, no Owner or other occupant of a Separate Interest may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Separate Interest to the peaceful and quiet enjoyment of the Separate Interest. If the Board determines that any such pet(s) or other animal(s) create an unreasonable annoyance or nuisance to any

Resident the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals shall be permitted in the Common Area except as specifically permitted by Rules and Regulations adopted by the Association Board.

The Association, its Board, officers, shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other Person in the Development, for any damage or injury to Persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board or Officers. However, an Owner shall be absolutely liable to each and all remaining Owners, their families, guests and invitees and to the Association for any and all damage to Persons or property caused by any pets brought upon or kept on such Owner's Separate Interest or the Common Area by such Owner or the Owner's family, guests, invitees, tenants and contract purchaser.

2.7 Restrictions on Signs. [CC 712 & 713] No sign of a permanent nature shall be allowed. No one may erect or display any sign on or from any Separate Interest, except one (1) sign of customary and reasonable dimensions, not to exceed 432 square inches, advertising a Separate Interest "for sale" or "for rent," as allowed by California Civil Code Sections 712 and 713. All signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board.

2.8 Restrictions on Antennae, Masts, Etc. There shall be no outside television or radio dish or antenna constructed, installed or maintained on any Separate Interest, except as permitted by state and federal law, or approval of the Architectural Committee. There shall be no outside masts, poles or flag poles constructed, installed or maintained for any purpose whatsoever without the prior written consent of the Architectural Committee or the Board. However, Residents shall be entitled to display an American flag of a reasonable size and in a dignified manner, subject to reasonable Rules and Regulations adopted by the Board. The Board may adopt Rules and Regulations restricting the construction, installation, maintenance or replacement of any such equipment as long as such restrictions do not contravene applicable Law.

2.9 New Building Only. No building of any kind shall be moved from any other place onto any of said Lots, or from one Lot to another Lot. No storage buildings of any type may be placed on any of said lots.

2.10 Minimum Floor Area of Dwellings. The ground floor area of the main structure located on any Lot, exclusive of open porches, patios, exterior stairways and garages, shall not be less than 830 square feet.

2.11 Balconies and Decks. No balcony or deck shall be higher above the ground than the first floor level except with the written approval of the Architectural Committee.

2.12 Trees. All trees shall be trimmed by the Owner of the Lot upon which the same are located so that the same shall not exceed the height of the house on the Lot, provided, however, that where trees do not obstruct the view from any other of said Lots they shall not be required to be so trimmed. Before planting any trees the proposed location of such trees shall be approved in writing by the Architectural Committee. This section is not intended to apply to trees in the Common Area.

2.13 Fences, Hedges and Rails. No fence, rail or hedge over 36 inches in height shall be placed in front of the set-back line on a Lot, and no fence, wall (except retaining wall), rail or hedge shall be over 72 inches in height elsewhere on the Lot. No fence may be constructed without the prior written consent of the Architectural Committee. Consent shall be withheld by the Architectural Committee if, in its sole discretion, the fences, hedges and rails within the limitations set forth herein are not structurally or aesthetically in harmony with the general type of construction and quality in the Development in general.

No part of the Common Area shall be obstructed by fencing or otherwise so as to interfere with its use for the purposes herein, and for the contemplated usage of the additional users that are anticipated by the membership of the Association.

2.14 *No Tents, Shacks, Etc.* No tent, shack, trailer, garage or out-building shall at any time be used on any Lot as a residence either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot.

2.15 *No Wells.* No well for the production of, or from which there is produced water, oil or gas, shall be operated upon any Lot; nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business.

2.16 *No Subdivision of Lots.* No Lot shall be re-subdivided into building sites having a frontage of less than shown on the original Recorded map for the Properties Filed for Record.

2.17 *Trash Collection.* Every Lot Owner shall subscribe to the local trash collection service.

2.18 *Separate Interest Modification.* Subject to other applicable restrictions contained in the Governing Documents, Owners may modify their Separate Interests or other Improvements therein or thereon subject to the following:

2.18.1 Modifications or alterations of the exterior of any Separate Interest or other Improvement must have the prior written consent of the Board or duly appointed Architectural Committee, including any modifications to facilitate access for Persons who are physically impaired as provided by California Civil Code Section 1360. Any approval of such a modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the access is no longer necessary for the Separate Interest.

2.18.2 Installation of any landscaping, either "hard-scape" or "soft-scape," must have prior approval of the Board or Architectural Committee.

2.18.3 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Common Area without the prior written consent of the Board.

2.19 *Damage Liability.* Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property, including any access control systems, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any Improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Separate Interest, the liability of the co-Owners shall be joint and several, unless the co-Owners and the Association have agreed in writing to an alternative allocation of liability.

ARTICLE 3 - REPAIR AND MAINTENANCE

3.1 *General.* The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, all maintenance, repair, replacement, restoration, upkeep, weatherproofing, cleaning or application of paint, stain, paper, plaster, tile, and other finishes as needed to keep Improvements

in a clean, safe, sanitary and attractive condition and to preserve the attractive appearance of each Separate Interest, the Common Area, and the Development and to protect the values thereof, and to ensure that there is no threat to the health, safety or welfare of any Resident.

The Board shall have the power to determine the standards of such maintenance, including the standards of landscaping, the selection and replacement of plant materials and the standards for exterior and structural maintenance by the Association. The replacement of structural and exterior items by Owners shall be subject to the architectural approval requirements of Article 4.

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

3.3 Specific and General Maintenance Duties. Subject to Article 9 pertaining to the destruction of Improvements and Article 10 pertaining to eminent domain, Exhibit B, attached hereto and incorporated herein by reference, sets forth the specific respective maintenance duties of the Association and the Owners for a list of specific components within the Development. If there is a conflict between the provisions of Exhibit B and the general maintenance duties set forth in this Article, it is intended that the provisions of Exhibit B shall control.

If Exhibit B contains an ambiguity or provides no guidance, then the general maintenance duties which follow shall be used to determine whether the Association or the Owner has the maintenance responsibility for the component or components involved. The Association, in general, shall be responsible for all maintenance within the Common Area, and each Owner shall be responsible for the maintenance of all portions of the Owner's Separate Interest and any Improvements therein or thereon.

All Improvements shall be maintained in a clean, sanitary and attractive condition and in accordance with the original construction design of the Improvements in the Development.

No Person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no Person, other than the Association, shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express written approval from the Board. Any unauthorized Improvement in the Common Area shall be considered a trespass on the Common Area and shall give the Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it.

3.4 Damage Caused by Owner or Item Under Control of Owner. [Civil Code §1367] If any damage occurs in the Common Area or to any component maintained by the Association due to the act or omission of any Owner, or such Owner's family members, tenants, guests, invitees, pets or other Person or entity deriving any interest through such Owner, the cost of all repairs shall be borne solely by the culpable Owner. In the case of joint ownership of a Separate Interest, the liability of the co-Owners shall be joint and several, unless the co-Owners and the Association have agreed in writing to an alternative allocation of liability.

3.4.1 The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the culpable Owner's expense.

3.4.2 The culpable Owner shall be responsible for performing the repair of any damage to his or her Separate Interest or other property over which such Owner has control. The Owner of

any other Separate Interest which sustained damage shall be responsible for performing the repair of any such damage, and may recover the cost thereof to the culpable Owner.

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

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

3.5 **Water Intrusion Damage.** Notwithstanding any other provision in the Governing Documents, each Owner shall be solely responsible for the repair or replacement of any damage to any and all interior items of his or her Separate Interest, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, caused by the failure of any Common Area Improvement or any other component or Improvement maintained by the Association, including water intrusion from whatever source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property due to water intrusion, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to property in the Development resulting from water which may leak or flow from outside of any Separate Interest or from any part of the Building, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.

3.6 **Failure to Maintain.** If an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the corrective janitorial, maintenance or repair work required and request that the same be done within a reasonable time from the giving of such Notice. If the Owner fails to carry out such work said time period, the Board may, after following Notice and Hearing procedures, cause such work to be done, and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by Law).

3.7 **Termite Control.** [Civil Code §1364] The responsibility for control of wood destroying pests or organisms shall be as provided in California Civil Code Section 1364. Specifically, each Owner shall be responsible for the control of wood destroying pests or organisms on his or her Separate Interest, and the Association shall be responsible for the control of wood destroying pests or organisms in the Common Area.

ARTICLE 4 - ARCHITECTURAL AND DESIGN CONTROL

4.1 **General.** Any change or improvement visible from the exterior of a Separate Interest shall be governed by this Article. Changes or Improvements to the Common Area by the Board do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested

in, and exercised by, the Board. However, the Board may establish an Architectural Committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

4.2 **Architectural Committee.** The Board may appoint an Architectural Committee consisting of three (3) persons to be appointed by, directly responsible to, and under the control and supervision of the Board. Each of said persons so appointed shall be subject to removal at the direction of said Board at any time and from time to time, and all vacancies on said Committee shall be filled by appointment of said Board.

4.2.1 The Board shall have the right to appoint all of the members of the Architectural Committee, at least two (2) of whom may, at the discretion of the Board, be members of the Board. In the absence of any such appointments, the Board shall serve as the Architectural Committee.

4.2.2 Members appointed to the Architectural Committee by the Board shall be Members of the Association, except the Board may choose to hire architects, or engineers, or other professional consultants to advise the Board or Architectural Committee.

4.2.3 All members of the Architectural Committee shall serve at the will of the Board and may be removed by the Board at any time with or without cause.

4.2.4 The Board or Architectural Committee shall meet from time to time, as necessary to properly perform its duties hereunder. The vote or written consent of the majority of the Board or the Architectural Committee shall constitute an act by such body unless the unanimous decision of its members is otherwise required by the Governing Documents.

4.2.5 The members of the Board or Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

4.3 **Restricted Activity.** No alteration shall be made in the exterior design or color of any structure or in the grade level or drainage characteristics of any Lot, and no building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, improvement or structure of any kind, or exterior alteration, or any interior alteration which would affect any portion of the Development maintained by the Association shall be commenced, erected, placed, painted or maintained within the Development, nor shall any alternation or improvement of any kind be made thereto, until the same has been approved in writing by the Board, or by the Architectural Committee. Materials to be used must harmonize, complement and be of similar materials used in the construction of existing dwellings in the Development. Where fences or hedges are allowed, review by the Architectural Committee, in relation to normal enjoyment of view by other Lot owners shall be required.

4.4 **Plan Submission and Review.** Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed Improvements, alterations or landscaping shall be submitted to the Board or to the Architectural Committee for approval as to quality of workmanship, design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Such plans and specifications shall specifically designate, either by listing, highlighting, or other means, all proposed architectural changes in a manner so as to be apparent upon review of the submittal. Architectural changes not so designated shall not be deemed approved even if the submittal is approved.

4.5 **Plan Approval.** If the Board or Architectural Committee fails to approve or disapprove any such plans and specifications within sixty (60) days after all necessary documents have been received by it, the Owner requesting said approval shall submit a written notice via certified mail, return receipt requested, to the Board advising the same of its failure to act. If the Board fails to approve or disapprove such plans and specifications within thirty (30) days after the receipt of said notice from the Owner, said plans and specifications shall be deemed approved and the related covenants shall be deemed to have been fully complied with; provided however, that in no event may any Improvement be installed in or modify the Common Area, without written approval from the Board, nor may any Improvement be installed that violates any provision of the Governing Documents or that violates any Law.

4.6 **Architectural Rules.** The Board or Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, Rules and Regulations to be known as "Architectural Rules." However, the Board shall have the ultimate authority to adopt, amend and repeal such Architectural Rules. Said Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for review by the Board or Architectural Committee and guidelines for architectural design, placement of Buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Development; provided, however, that said Architectural Rules shall not violate the standards required by this Declaration.

4.7 **Interpretation of Restrictions.** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Committee, and its decision, when approved by the Board of Directors shall be final, binding and conclusive on all of the parties affected.

4.8 **Exempted from Review.** No permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Architectural Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Board or its Architectural Committee. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any Improvements within the interior of the Owner's Dwelling, provided such Improvement or alteration does not impair the Common Area, or any utilities, or other systems servicing the Common Area or other Separate Interests, and does not involve altering any Common Area.

4.9 **Governmental Approvals.** Prior to commencing any alteration or Improvements approved by the Board or Architectural Committee, the Owner shall comply with all appropriate governmental Laws and regulations, including obtaining a building permit where required by Law. Approval by the Board or Architectural Committee shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association's review is limited to aesthetic considerations and to insuring compliance with the Governing Documents. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board or Architectural Committee, which penalties shall be the responsibility of such Owner. Each Owner, by accepting a deed to his or her Separate Interest, agrees to reimburse the Association for any loss resulting from the violation of any applicable governmental Laws and regulations.

4.10 **Liability.** Neither the Board, the Architectural Committee nor any member or designated representative thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided,

however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

4.11 **Non-Compliance with Laws.** All plans and specifications submitted by the Owners pursuant to this Article are not approved for engineering design or compliance with building codes. Neither the Association, the Board nor the Architectural Committee shall be responsible for any non-compliance with any Law by any Building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or Architectural Committee or any defect in any conditions or requirements they may have imposed with respect thereto.

4.12 **Enforcement.** If there is a violation of any of the provisions of this Article by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Board or Architectural Committee, the Board or Architectural Committee shall have the right and authority, after Notice and Hearing procedures, and in addition to any other remedies provided by Law, to perform the subject matter of such directive including, if necessary, the right to enter the Separate Interest where a violation of these restrictions exists, and the cost of such performance shall be charged to the Owner of the Separate Interest in question. Such costs shall be due within five (5) days after receipt of written demand therefore, and shall bear interest at the maximum rate allowed by Law. Said costs may be recovered by the Board or Architectural Committee together with such interest and actual attorney's fees and costs in an action at law against such Owner.

ARTICLE 5 - ASSOCIATION

5.1 **Organization of the Association.** The Association is incorporated as a non-profit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Development and is charged with the duties and granted the powers prescribed by Law and as set forth in the Governing Documents.

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

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

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

5.5 **Membership Meetings.** Meetings of Members shall be held in accordance with the Bylaws.

5.6 **Rules and Regulations.** The Board shall have the power to adopt reasonable Rules and Regulations governing the use of the Separates Interests, the Common Area, and any common facilities and

Association-owned property, and the conduct at Board and Members' meetings, in accordance with the following:

- 5.6.1 The Rules and Regulations may include, but are not limited to:
- (a) Reasonable restrictions on the use of the Common Area and Separate Interests and by the Owners and their families, guests, employees, tenants and invitees.
 - (b) Rules of conduct for the Owners, their families, guests, employees, tenants and invitees as to activities in the Common Area and the Separate Interests, including rules that the Owner whose family members, guests, employees, tenants or invitees leave property on the Common Area in violation of the Rules, may be assessed to cover the expense incurred by the Association in removing such property and storing or disposing of it.
 - (c) The setting of reasonable fees, deposits and use fees for any Common Area facilities.
 - (d) The establishment of reasonable Notice and Hearing procedures, as provided in the Bylaws, and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.
- 5.6.2 A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within thirty (30) days after adoption by the Board.

5.7 **General Powers and Authority.** [Civil Code §1363(c)] The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

- 5.7.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 6 herein;
- 5.7.2 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in the California Civil Code and Code of Civil Procedure.
- 5.7.3 The right to discipline Owners for violation of any of the provisions of the Governing Documents (i) by suspending the Member's Membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Owner's Separate Interest, (ii) by imposing monetary fines, subject to the requirements for Notice and Hearing as more fully set forth in the Bylaws, and (iii) to the extent allowed by Law, Recording a notice of noncompliance against the Owner's Separate Interest;

- 5.7.4 The right and easement for its agents and employees to enter any Separate Interest when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. Except for areas the Association maintains routinely, this entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. However, the Association shall not be responsible for any damage or destruction of Owner-installed Improvements that are damaged or destroyed if they interfere with the Association's easement for access to any Association-maintained Improvements;
- 5.7.5 The Board shall have the power to remove any vehicle within the Development parked in violation of this Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto; and
- 5.7.6 The power, without the approval of the Membership, to bid and acquire any Separate Interest at a foreclosure sale.

5.8 **Limit on Capital Expenditures.** [DRE Reg. 2792.21(b)(2)] The Board shall be prohibited from incurring aggregate expenditures for Capital Improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except with the vote or written assent of a majority of the total Voting Power of those Members voting, so long as a quorum is present or represented at the meeting.

5.9 **Other Powers and Duties of the Association.** Subject to the limitations set forth in the Governing Documents, the Association, acting through the Board, shall have other powers and duties as more fully described in the Bylaws.

ARTICLE 6 - ASSESSMENTS AND COLLECTION PROCEDURES

6.1 **Covenant to Pay.** Each Owner, by acceptance of the deed to the Owner's Separate Interest, is deemed to covenant and agree to pay to the Association Regular, Special, Utility and Individual Assessments, and all other charges duly levied by the Association pursuant to the provisions of this Declaration or by Law. This covenant is independent of any covenants contained herein which obligate the Association to perform any actions or provide any services. Any Assessment, late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be the personal obligation of the Owner of the Separate Interest at the time the Assessment or other sums are levied. Co-Owners of a Separate Interest shall be jointly and severally liable for all charges levied by the Association on that Separate Interest. No Owner may waive or otherwise escape liability for these Assessments by nonuse of the Common Area or abandonment of the Owner's Separate Interest.

6.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy Assessments sufficient to perform its obligations. The Assessments levied by the Association shall be used to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Development; and to discharge any other obligations of the Association under this Declaration. All Assessment payments shall be put into general operating and Reserve funds to be used for the foregoing purposes.

6.3 **Budget Preparation.** [Civil Code §1365] Concurrently with preparation of the financial documents and budget required by Law and the Bylaws, the Board shall estimate the net charges to be paid

during that next fiscal year, including a reasonable provision for contingencies, replacements and Reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the Regular Assessments for the budgeted year. Failure of the Board to estimate the net charges within the time period stated herein shall not void any Assessment imposed by the Board.

6.4 **Regular and Special Assessments.** [Civil Code §1366] The Board shall determine and levy such Regular and Special Assessments as necessary to perform its duties under the Governing Documents, to meet its obligations, and to comply with applicable Laws. Regular and Special Assessments shall be divided equally among all Separate Interests and allocated among, assessed against and charged to each Owner according to the ratio of the number of Separate Interests owned by the assessed Owner to the total number of Separate Interests subject to Assessment. Regular Assessments for fractions of any month shall be prorated. Each Owner is obligated to pay Assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment. Regular Assessments may be increased, or Special Assessments may be imposed, as the Board in its sole discretion determines necessary, subject however, to the increases permitted under Section 6.9 below.

6.5 **Special Assessments.** If the Board determines that the amount to be collected from Regular Assessments will be inadequate to defray the Common Expenses for the year due to the cost of any construction, unexpected repairs or replacements of Capital Improvements upon the Common Area, or any other reason, it shall make a Special Assessment for the additional amount needed. Special Assessments shall be levied and collected in the same manner as Regular Assessments.

6.6 **Individual Assessments.** The Board may levy other Assessments against specific Owners and their respective Separate Interests ("Individual Assessments"), including but not limited to, the following:

- 6.6.1 Monetary penalties or fines levied against an Owner and his or her Separate Interest as a disciplinary measure for failure of such Owner, or his or her tenants, guests, invitees, agents, or others claiming under such Owner, to comply with the Governing Documents.
- 6.6.2 Reimbursement Assessments against Owners and Separate Interests whenever the Association (i) performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or (ii) incurs any costs which, by Law or as required by the Governing Documents, must be reimbursed by an Owner.

Prior to levying an Assessment as provided in this Section, the Board shall provide an Owner with Notice and Hearing procedures in accordance with the Bylaws.

6.7 **Collection of Monetary Penalty.** [Civil Code §1367] If the Board of Directors imposes a monetary penalty or fine against an Owner, that fine shall be subject to costs, late charges and interest as described in Section 6.11 for delinquent payment. Furthermore, such fine or monetary penalty may become a lien on the Separate Interest, collectable by the Association as allowed by Section 6.12 herein, so long as such monetary penalty is for damage to the Common Area or other areas the Association is responsible for maintaining. If such monetary penalty is not for damage to the Common Area or for damage to other areas the Association is responsible for maintaining, the monetary penalty also may become a lien on the Unit, collectable by the Association through judicial foreclosure or other methods permitted by Law or by Section 6.12 herein, so long as the Association does not seek to enforce such a lien through nonjudicial foreclosure.

6.8 **Separate Interests Not Subject To Assessment.** Assessments that would normally become due on Separate Interests, but which Separate Interests are owned by the Association, shall be deemed to be

Common Expenses collectible from all of the remaining Separate Interests in the same proportion that each Separate Interest bears to all other Separate Interests, after excluding the Separate Interests owned by the Association.

6.9 Limitation on Assessment Increases. [Civil Code §1366] Except for an "Emergency," as defined below or by Law, the Board may not, without the approval of a majority of the Owners casting a majority of the votes at a meeting or election of the Association at which a quorum is present, conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a Regular Assessment per Separate Interest that is more than twenty percent (20%) greater than the Regular Assessment for the preceding fiscal year, or levy Special Assessments that, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to Assessment increases that are necessary for an Emergency. An "Emergency" is an extraordinary expense that is:

- 6.9.1 Required by a court order;
- 6.9.2 Necessary to repair or maintain the Development or any part of it for which the Association is responsible when a threat to personal safety in the Development is discovered; or
- 6.9.3 Necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an Assessment in such an emergency, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of Assessment.

6.10 Owner Notice of Assessments. [Civil Code §1366] The Association shall provide notice by first-class mail to the Owners of any increase in the Regular Assessments or the imposition of a Special Assessment not less than thirty (30) days nor more than sixty (60) days prior to the date the increase in the Regular Assessment or Special Assessment becoming due.

6.11 Costs, Late Charges and Interest. [Civil Code §1366] Late charges may be levied by the Association against an Owner for the delinquent payment of any Assessment, fines and monetary penalties. An Assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an Assessment is delinquent, the Association may recover all of the following from the Owner:

- 6.11.1 Reasonable costs incurred in collecting the delinquent Assessment, including actual attorneys' fees;
- 6.11.2 A late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10.00), whichever is greater, or the maximum amount allowed by Law.
- 6.11.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the Assessment becomes due or such other rate as allowed by Law.

No late charge may be imposed more than once for the delinquency of the same payment. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided by Law and in Section 6.12 below.

6.12 Collection of Delinquent Assessments and Late Charges. [Civil Code §§1367 & 2924b] Delinquent Assessments, fines, monetary penalties, and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest, assessed in accordance with Section 6.11 herein, shall become a lien upon the Separate Interest when a Notice of Delinquent Assessment (hereafter "Lien") is duly Recorded as provided in California Civil Code Section 1367. Unless otherwise provided by Law, the Lien shall describe the amount of the delinquent Assessment or installment, the related charges authorized by this Declaration, a description of the Separate Interest, the name of the purported Owner, and, if the Lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the Lien by sale. The Lien shall be signed by any Officer of the Association, or any employee or agent of the Association authorized to do so by the Board, or by the Association's attorney. The Lien shall be mailed in the manner set forth in Civil Code §2924b, to all Record Owners of the Unit no later than ten (10) calendar days after Recording. The Lien shall also secure all other Assessments and all other charges, including late charges, interest, costs, and attorney's fees, which shall become due and payable with respect to the Owner's Separate Interest following the Recording of the Lien. Said Lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

Unless otherwise permitted by Law, the Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall include the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, and any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. If the delinquent Assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Lien.

If not paid in full within thirty (30) days after recording the Lien, any Lien described herein may be enforced in any manner permitted by Law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Lien or by a trustee substituted pursuant to California Civil Code Section 2934(a), in accordance with the provisions of California Civil Code Sections 2924, 2924(b), and 2924(c).

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

The Lien is not required to be amended to reflect any partial payments after its Recording, and any such partial payments shall not be construed to invalidate the Lien, and said Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, unless a monetary penalty has been levied to recover for damage to the Common Area or for damage to other areas the Association is responsible for maintaining, a monetary penalty or fine may not become a Lien on a Separate Interest enforceable by the sale of the Separate Interest through nonjudicial foreclosure. Any Lien recorded to enforce such a monetary penalty or fine must specifically state that such Lien may not be enforceable by sale of the Unit through nonjudicial foreclosure.

6.13 **Priority of Assessment Lien.** The Assessment Lien referred to in Section 6.12 shall be superior to all other liens, except (i) all taxes, bonds, Assessments and other levies which, by Law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of Record. Sale or transfer of any Separate Interest shall not affect this Assessment Lien; provided that the transfer of any Separate Interest pursuant to judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such Assessments as to payments which became due prior to the transfer, except for those Assessment liens Recorded prior to the First Mortgage. No sale or transfer shall relieve such Separate Interest from liability for any Assessments thereafter becoming due or from the Lien thereof.

6.14 **Taxation of Association.** If any taxes are assessed against the Association, rather than against the Owner's Separate Interests, said taxes shall be added to the annual Assessments, and, if necessary, a special Assessment may be levied against the Separate Interests in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

6.15 **Statement of Delinquent Assessment.** [Civil Code §1368] The Association shall provide any Owner, upon written request and upon payment of a reasonable fee, with a statement specifying the amounts of any delinquent Assessments and related late charges, interest, and costs levied against the Owner's Separate Interest. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon such certificate as conclusive evidence of whether the Assessments on the specified Separate Interest have been paid.

ARTICLE 7 - ENFORCEMENT

7.1 **Right to Enforce; Remedies.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all provisions, conditions, restrictions, covenants, easements, reservations, liens and charges now or hereafter imposed by the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

7.2 **Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, reservation, lien or charge contained in the Governing Documents is violated in whole or in part, is declared to be and to constitute a nuisance, and every remedy allowed by Law or equity against a nuisance, either public or private, shall be applicable against every act or omission or incident resulting in a nuisance and may be exercised by any Owner or the Association.

7.3 **Compliance by Owners, Tenants, Etc.** Each Owner, tenant, occupant, licensee, invitee or guest within the Development shall comply with the provisions of this Declaration, the Bylaws, other Governing Documents of the Association and decisions and resolutions of the Association or its duly authorized representative. Each Owner shall be responsible for insuring that his or her tenant, occupant, licensee, invitee or guest within the Development complies with the terms hereof. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages, for injunctive relief, for declaratory relief or such other relief as is just and proper.

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

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

7.6 **Compliance with Statute.** [Civil Code §1354] All activities to enforce the provisions of the Governing Documents shall be conducted in accordance with all applicable Laws, statutes and ordinances, including any obligation to attempt to use alternative dispute resolution, whether pursuant to Civil Code Section 1354 or any similar statute. This Section shall apply to both the Association and to all Owners.

ARTICLE 8 - INSURANCE

8.1 **Fire and Casualty Insurance.** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with special form all risk coverage endorsement for the full insurable replacement value, without deduction for depreciation, of the Improvements in the Common Area. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insureds, subject, however, to any loss payment requirements set forth in this Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code upgrade endorsement.

Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association and its Officers, Directors, and Members, the Owners and occupants of the Separate Interests and Mortgagees, and a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

8.2 **General Liability Insurance.** [Civil Code §§1365.7 & 1365.9] The Association shall obtain and maintain a policy or policies of insurance to protect the Association, its Officers, Directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members with respect to the Common Area and any Separate Interests owned by the Association. Limits of liability under the insurance shall not be less than three million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code Sections 1365.7 or 1365.9 or any successor statute is a larger amount, the statute shall control.

8.3 **Directors and Officers Liability Insurance.** [Civil Code §§1365.7] The Association shall also obtain and maintain one or more policies of insurance which shall include coverage for the individual liability of Officers and Directors of the Association for negligent acts or omissions of those Persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be in the minimum amount of one million dollars. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute specifies a larger amount, the statute shall control.

8.4 **Fidelity Coverage.** The Association shall purchase and maintain a bond or other fidelity coverage, naming the Association as an obligee, for any Person or entity handling funds of the Association, whether or not such Persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, if reasonably available, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g. crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. However, in no event may the aggregate amount of this coverage be less than a sum equal to three (3) months' aggregate Assessments on all Separate Interests plus Reserve funds. The bond or policy must contain a provision that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

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

8.6 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any insurance carrier or provider.

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

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

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

8.10 **Insurance Premiums.** Insurance premiums for any insurance coverage obtained by the Association shall be a Common Expense and included in the Regular or Special Assessments.

8.11 **Insurance Policy Deductibles.** The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. If the Board determines that the damage or loss is due to the act or omission of any Owner, or of a Resident, guest, tenant or invitee of such Owner, then such Owner shall be liable for the cost of the deductible.

8.12 **Insurance Disclosures.** [Civil Code §1365] The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or Law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or Law.

8.13 **Individual Casualty Insurance.** An Owner shall separately insure, at his or her own expense, his or her Lot / Separate Interest and all real and personal property and original or subsequent

Improvements on or in such Separate Interest, and shall obtain and maintain such insurance as may be required by any Mortgagee of the Owner's Separate Interest. All such insurance that is individually carried shall contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Lender of such Separate Interest.

8.14 **Individual Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Separate Interest that he or she believes is sufficient to protect such Owner from liability for the acts or omissions of such Owner.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **Duty to Restore Separate Interest.** If all or any portion of any Separate Interest or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Separate Interest to rebuild, repair or reconstruct the Dwelling on such Separate Interest in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Architectural Committee. The Owner of any damaged Separate Interest or Dwelling and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three (3) months after the damage occurs and to be completed within one year after damage occurs, unless prevented by causes beyond such Owner's reasonable control.

9.2 **Duty to Restore Common Area.** If all or any portion of the Common Area for which insurance carried by the Association is in effect, is damaged or destroyed, it must be repaired or replaced promptly by the Association unless:

- 9.2.1 The Development is terminated;
- 9.2.2 Repair or replacement would be illegal under a state statute or municipal ordinance;
or
- 9.2.3 The damaged or destroyed portion of the Development is partitioned in accordance with Section 13.3 herein.

9.3 **Cost of Repair.** Any cost of repair or replacement in excess of insurance proceeds and Reserves shall be a Common Expense, levied against Separate Interests in the same proportion as Regular Assessments are levied.

9.4 **Repair Plans.** The Development must be repaired and restored in accordance with either (a) the original plans and specifications, updated as required to reflect applicable building codes, or (b) other plans and specifications which have been approved in writing by the Board, a majority of Owners, and at least fifty-one percent (51%) of the Eligible Lenders holding Mortgages on Separate Interests subject to the repair.

9.5 **Replacement of Less Than Entire Development.**

- 9.5.1 Any insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Development.
- 9.5.2 Except to the extent that other Persons or entities will be distributees:

- (a) Any insurance proceeds attributable to a Separate Interest that is not rebuilt must be distributed to the Owner of that Separate Interest or to Lenders or lien holders, as their interests may appear; and
- (b) The remainder of the proceeds must be distributed to each Owner or lien holder, as their interests may appear, in proportion to the interests of all the Separate Interests.
- (c) If the Owners vote not to rebuild a Separate Interest, any common interest portions of the Separate Interest shall be reallocated among all other Separate Interests, and the Board is hereby appointed as attorney-in-fact on behalf of the Owners, Lenders and other lienholders to prepare, execute and Record an amendment to the Governing Documents reflecting any such reallocations.

9.6 **Minor Repair.** The Board shall have the duty to repair and reconstruct all Common Areas without the consent of Members and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed \$5,000.00. In the case of damage to Common Areas which does not exceed \$5,000.00, all Separate Interests shall be assessed for an equal portion of any uninsured expense, if necessary. The Board may waive this absolute duty to repair by a unanimous vote, which shall be duly noted in the minutes of the meeting at which the vote was taken, and shall be communicated to Owners.

9.7 **Insurance Proceeds.** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by a majority vote, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Areas have been completely repaired or restored, or unless the Development is terminated.

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

- 9.8.1 Whether or not damaged or destroyed property is to be repaired or restored; and
- 9.8.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

ARTICLE 10 - EMINENT DOMAIN

10.1 **Representation by Association.** The Association shall represent the Owners in any threatened condemnation, condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or any part thereof. In furtherance of this purpose, all Owners, by acceptance of a deed to their respective Separate Interests, irrevocably appoint the Association as their attorneys-in-fact to represent such Owners in any such condemnation proceeding.

Due to the potential for conflicting interests among Owners and their respective Lenders, the Association shall have no obligation to represent any Owner in the taking of any Separate Interests by eminent domain.

10.2 **Taking of Common Area.** If a governmental agency proposes to take all or any part of the Common Area by eminent domain, the Association may sell all or any portion of the Common Area to the condemning authority. The sales price shall be any amount deemed reasonable by the Board. The proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of Mortgagees. If necessary, the remaining portion of the Development shall be resurveyed to reflect such taking.

10.3 **Taking of a Separate Interest.** If all or any part of a Separate Interest is taken by eminent domain, the award shall be disbursed to the Owner of the Separate Interest subject to the rights of the Owner's Mortgagees. If the taking renders the Separate Interest uninhabitable, the Owner shall be divested of any further interest in the Development, including Membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

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

ARTICLE 11 - RIGHTS OF LENDERS

11.1 **Lender Rights.** Mortgagees of Separate Interests in the Development shall be entitled to the rights and guarantees set forth in this Article.

11.2 **Protection of First Mortgagees.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Separate Interest made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through judicial or non-judicial foreclosure, or otherwise.

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

11.4 **Unpaid Assessments or Charges.** If the Lender on a First Mortgage or other purchaser of a Separate Interest obtains title to or possession of the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or Assessments made by the Association chargeable to such Separate Interest that became due prior to the acquisition of title to or possession such Separate Interest by such acquirer, whichever occurs first. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Separate Interests including such acquirer, his successors and assigns.

11.5 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Separate Interests and Common Area, unless at least two-thirds (2/3) of the First Lenders (based upon one (1) vote for each Mortgage owned), and two-thirds (2/3) of the Voting Power of the Association have given their prior written approval, neither the Association nor the Owners shall be entitled to:

11.5.1 Seek, by act or omission, to abandon, or terminate the Development as a Common interest Development (except for abandonment or termination provided by Law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

11.5.2 Change the pro rata interest or obligations of any individual Separate Interest for the purpose of (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Separate Interest in the Common Area (if any), provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.

11.5.3 Partition or subdivide any Separate Interest.

11.5.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (provided however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).

11.5.5 Use hazard insurance proceeds for losses to any of the Development (whether to Separate Interests or to Common Area) for other than the repair, replacement or reconstruction of such property.

11.6 **Payment of Taxes and Insurance.** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

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

11.8 **Notification of Lender.** Upon written request to the Association, identifying the name and address of the holder, insurer or institutional guarantor and the Lot number or address of the Separate Interest on which the Eligible Lender holds a Mortgage, any Eligible Lender will be entitled to timely written notice of:

11.8.1 Any condemnation loss or any casualty loss which affects a material portion of the Development or the Separate Interest insured or guaranteed by such Eligible Lender;

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

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

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

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

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

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

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

11.13 **Right to Furnish Mortgage Information.** Each Owner authorizes the First Mortgagee of a First Mortgage on the Owner's Separate Interest to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

11.14 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide a copy of the most recent audit or review of the Association's financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

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

ARTICLE 12 - AMENDMENTS

12.1 *Owner Approval of Amendments.* [Civil Code §1355] This Declaration may be amended by the vote or written consent of at least a majority of the Voting Power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of the Voting Power of Members has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Board for that purpose or, if no such designation is made, by the President of the Association, and (c) the document has been properly Recorded.

12.2 *Approval of Specified Amendments.* Notwithstanding Section 12.1 above, the consent of sixty-seven percent (67%) of the Voting Power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend (i) any provision of this Declaration which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Declaration that establish, provide for, govern or regulate:

12.2.1 Voting rights.

12.2.2 Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens or the priority of Assessment liens.

12.2.3 Reductions in Reserves for maintenance, repair and replacement of the Common Area.

12.2.4 Responsibility for maintenance and repairs.

12.2.5 Reallocation of interests in the Common Area or rights to its use.

12.2.6 Redefinition of any Separate Interest boundaries.

12.2.7 Converting Separate Interests into Common Area or vice versa.

12.2.8 Expansion or contraction of the Development, or the addition, annexation, or withdrawal of property to or from the Development.

12.2.9 Hazard or fidelity insurance requirements.

12.2.10 Imposition of any restrictions on the leasing of Separate Interests.

12.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his or her Separate Interest.

12.2.12 Changing the fundamental purpose for which the Development was created such as a change from residential to a different use.

12.2.13 Changing any provisions which, by its terms, is specifically for the benefit of first Mortgagees or insurers or guarantors of first Mortgages on Lots.

Notwithstanding the foregoing, this section may be amended to reflect changes in Lender requirements established by the VA, FHA, FNMA, FHLMC or GNMA.

12.3 **Eligible Lender Approval Response.** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

12.4 **Amendment of Declaration or Bylaws by Board Vote.** The Board of Directors shall have the power to amend this Declaration or the Bylaws, as the case may be, but only as this section permits. By a Majority vote of the Board, the Board shall have the power to prepare and, if necessary, to Record an amendment for either or both of the following purposes:

(a) To correct any printing or grammatical error or omission in the Declaration or Bylaws without any vote of the Members.

(b) To make any change in the Declaration or Bylaws required by a change in any applicable Law, which requires the Association, the Board or the Owners to conform their conduct with the terms of the Law. If the Board approves an amendment using the procedure in this subparagraph (b), the amendment shall not be Recorded or Filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is required by Law. An amendment shall be considered ratified, unless within thirty (30) days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent (20%) of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a Special Meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the Special Meeting.

This section shall not restrict the powers of the Owners to amend this Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

12.5 **Statute of Limitations to Challenge Amendments.** No action to challenge the terms or validity of any amendment to this Declaration or to the Bylaws may be made more than one year (1 yr.) after the Recording date in the case of an amendment to the Declaration, or more than one year (1 yr.) after the official tally of the vote in the case of an amendment to the Bylaws.

ARTICLE 13 - THE PROPERTY

13.1 **Development Subject to Declaration.** The entire Development shall be subject to this Declaration and other Governing Documents of the Association.

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

13.3 **Prohibition Against Partition.** [Civil Code §1359] There shall be no judicial partition of the Development or any part of it, nor shall any Person acquiring an interest in the Development or any part

of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of California Civil Code Section 1359 or any successor statute.

13.4 ***Prohibition Against Severance of Elements.*** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Separate Interest shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 5.3 herein. Any transfer that attempts to sever those component interests shall be void.

13.5 ***Encroachment Easements.*** The Owner of each Separate Interest is hereby granted an easement over all adjoining Separate Interests and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any Building, or any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided however that, in no event, shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of any Owner. If any portion of a structure in the Development is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Separate Interests or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

13.6 ***Rights in Common Area.*** The Owner of each Separate Interest is hereby granted nonexclusive rights in the Common Area as described in Section 2.2.3.

13.7 ***Utility Easements.*** Where utility facilities are located on a Separate Interest or Separate Interests owned by other than the Owner of a Separate Interest served by said utility facilities, the Owners of any Separate Interests served by said utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain said utility facilities as and when the same may be necessary. An Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining internal and external telephone wiring servicing such Owner's Separate Interest. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such approval of telephone wiring upon exterior Common Areas in the Development, and other conditions as the Association determines reasonable.

If utility facilities serve more than one (1) Separate Interest, the Owner of each Separate Interest served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his Separate Interest.

13.8 ***Effect of Easements Granted.*** Each of the easements reserved or granted in this Article shall be covenants running with the land for the use and benefit of the Association or the Owners and their Separate Interests, as the case may be, and shall be superior to all other encumbrances applied against or in favor of any portion of the Development. Individual grant deeds to Separate Interests may, but shall not be required to, set forth the easements specified in this Article.

13.9 ***Easements Over Separate Interests.*** The Association shall have an easement over each Separate Interest for the purpose of allowing the Association's agents to enter the Separate Interest to perform such duties as may be required by the Governing Documents. Each Owner acknowledges and expressly consents to this easement.

13.10 ***Drainage and Slope Easements.*** The Owner of a Separate Interest shall permit free access by Owners of adjacent or adjoining Separate Interests, or the Association and its agents, to slopes or drainage ways located on his property, when such access is essential for the maintenance of permanent

stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Separate Interest on which the slopes or drainageway is located. The Owner of any Separate Interest shall not in any way interfere with the established drainage pattern over his Separate Interest from adjacent or adjoining Separate Interests, and such Owner shall make adequate provisions for property drainage if it is necessary to change the established drainage over his Separate Interest. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time of the overall grading of the Development was completed.

13.11 **Slope Control, Use and Maintenance.** Each Owner shall keep, maintain, water, plant and replant all slope banks located on such Owner's Lot so as to prevent erosion and to create an attractive appearance. No structure, planting, or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The Board or its appointed Architectural Committee shall be the sole judge in determining compliance with the provisions of this paragraph, and each individual Lot Owner shall promptly perform or conform to all directives issued by the Board or Architectural Committee for compliance with the provisions of this paragraph.

13.12 **Easements Over Common Area.** Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Separate Interest and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, and shall be subject to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

13.13 **Party Walls.** Each wall that is built as part of the original construction of a Dwelling, and that is located on the boundary line with an adjacent Separate Interest and either is used in common with the Dwelling on the adjacent Separate Interest or abuts against a similar wall on the adjacent Separate Interest shall constitute a party wall. A fence on a boundary between two adjoining Lots shall also be considered a party wall. To the extent not inconsistent with the following, the general rules of Law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto:

13.13.1 The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

13.13.2 If a party wall is destroyed or damaged by weather, 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 cost of restoration thereof in proportion to such use; provided, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction shall bear the full cost of restoration that is not covered by insurance.

13.13.3 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE 14 - GENERAL PROVISIONS

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

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

14.3 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision. If for any reason this Declaration is declared invalid in its entirety, the Original Declaration shall be deemed to have survived and shall thereafter become effective without any further action.

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

14.5 **Interpretation.** The provisions of this Declaration and the Governing Documents shall be liberally construed and interpreted to effectuate the purpose of creating a uniform plan for the development and operation of a Common Interest Development and for the mutual benefit of all owners. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Declaration.

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

14.7 **Address for Notices.** Unless otherwise required by Law, any written notice or other document required to be given by the Governing Documents may be delivered personally or by mail. If by mail such notice shall be deemed to be delivered and received, unless expressly provided otherwise elsewhere in the Governing Documents, forty-eight hours (48 hr.) after a copy thereof has been deposited in the United States mail, postage prepaid, and addressed to the Owner, to the address of the Owner's Separate Interest or to the address last furnished to the Board by the Owner. Each Owner, promptly upon becoming an Owner, shall file his or her address, in writing, with the Board for the purpose of receiving notice, and shall promptly notify the Board in writing of any subsequent change of address. If an Owner fails to furnish such address for notice, the address of the Owner's Separate Interest conclusively shall be presumed to be the address for notice to such Owner.

14.8 **Fair Housing.** Neither the Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Separate Interest to any Person on the basis of race, color, sex, religion, ancestry, national origin, marital status or physical handicap or any other basis or characteristic prohibited by Law.

14.9 **Number and Headings; Code References.** As used in this Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision. All references to Code Sections, whether Civil Code, Corporations Code, Code of Civil Procedure, or others, shall be deemed to include references to subsequent code sections, if the referenced code is amended, renumbered or otherwise changes.

14.10 **Attorneys' Fees.** If an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorneys' fees and costs so incurred. If litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute

a lien on the Separate Interest which is enforceable pursuant to Article 6 herein. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

14.11 **Power of Attorney; Attorney-in-Fact for Owners.** Each Owner, by acceptance of a deed to his or her Separate Interest, irrevocably appoints the Association as such Owner's attorney-in-fact, to execute and Record any documents on such Owner's behalf that are authorized under the terms of the Governing Documents and that would otherwise require the signature and/or acknowledgment of such Owner.

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

14.12.1 Variances may be granted, without limitation, to restrictions upon use contained in Article 2, restrictions on repair and maintenance in Article 3, and architectural restrictions in Article 4, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.

14.12.2 Variances shall be in writing and shall become effective upon final approval by the Board.

14.12.3 When a variance is granted, no violation of the Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental Laws and regulations affecting the use of the Separate Interest, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental entity having jurisdiction.

14.12.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.

14.12.5 The Board may enact additional Rules and Regulations regarding the variance approval process, the circumstances under which a variance may be granted, and the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

14.12.6 No variance may be granted if it would violate any Law.

14.13 **Incorporation of Exhibits.** All exhibits referred to in this Declaration are deemed to be incorporated herein by reference.

14.14 **Governing Document Priorities.** If there is a conflict among the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) this Declaration, (2) the Articles, (3) the Bylaws, and (4) the Rules and Regulations.

14.15 **Conflict with Statutes.** Provided any Law is inconsistent with any provision or provisions of the Governing Documents, and compliance with that Law is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the Law or for failing to comply with provisions of the Governing Documents if compliance would violate such Law.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Declaration of Restrictions and certified its approval on MARCH 16, 2002.

ALTAMIRA MANAGEMENT ASSOCIATION NO. 1,
a California nonprofit mutual benefit corporation

By: Dana Andrew Johnson
Dana Andrew Johnson, President

By: Nicholas Brunski
Nicholas Brunski, Secretary

State of California)
)
County of San Diego)

On _____, before me, _____, a Notary Public, personally appeared _____,

- personally known to me
- OR -
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

Notary Public

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of San Diego

} SS.

On 4/1/02 before me, Neal Ganz

(DATE)

(NOTARY)

personally appeared Nicholas Brumski

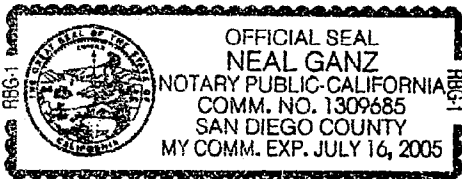
SIGNER(S)

personally known to me

- OR -



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



WITNESS my hand and official seal.

Neal Ganz
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

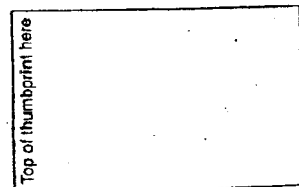
TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

RIGHT THUMBPRINT
OF
SIGNER



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

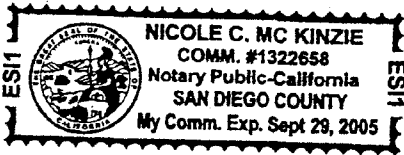
State of California

County of San Diego

On March 21, 2002 before me, Nicole C. McKinzie, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Dana Andrew Johnson
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Nicole C. McKinzie
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

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

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A - DEFINITIONS

1. **"Act"** [Civil Code §1350] means the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350 *et seq.*, as it may be amended from time to time.
2. **"Articles"** means the Articles of Incorporation of Altamira Management Association No. 1 that were filed in the Office of the Secretary of State of the State of California on July 20, 1972, and any amendments thereto now existing or hereafter adopted.
3. **"Architectural Committee"** means the committee, if any, appointed by the Board to carry out the duties described in Article 4 of this Declaration and any other duties pertaining to the management and approval of architectural modifications within the Property.
4. **"Assessment"** means a charge against a particular Owner and the Owner's Separate Interest, representing a portion of the Common Expenses or other charges that are to be paid by each Owner to the Association, as more fully set forth in Article 6.
5. **"Association"** [Civil Code §§1351(a) & 1353] means Altamira Management Association No. 1, a California nonprofit mutual benefit corporation created for the purpose of managing a Common Interest Development.
6. **"Board"** means the Board of Directors of the Association.
7. **"Building"** means a residential structure that is part of a Separate Interest.
8. **"Bylaws"** means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.
9. **"Capital Expenditure" or "Capital Improvement"** means the use of Association funds to construct or build an addition to the Development, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Development which the Association is obligated to maintain, using materials of similar kind, or using materials which are needed due to changes in building or fire codes or due to discontinued manufacture or unavailability, or using material that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or Improvement may be considered a capital expenditure or capital improvement for tax purposes.
10. **"Common Area"** means those portions of the Property and all Improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of the following:

Lots 199 through 206, inclusive, of Carlsbad Tract 72-2.1 according to Map thereof No. 7303 filed in the Office of the County Recorder of San Diego County, California, on June 9, 1972; and

Lots 335 through 341, inclusive, of Carlsbad Tract 72-2.2 in the City of Carlsbad, County of San Diego, State of California, according to Map thereof No. 7476, filed November 6, 1972 in Official Records of San Diego County, California.

11. **"Common Expenses"** [Civil Code §1365(a)(1)] means and includes the actual and estimated expenses of operating the Development, and any reasonable Reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Governing Documents.

12. **"Common Interest Development"** [Civil Code §1351(c)] shall have the meaning set forth in Civil Code Section 1351(c), as the same may be amended from time to time.

13. **"County"** means San Diego County, California.

14. **"Declaration" or "Restated Declaration"** [Civil Code §1351(h)] means this Amended and Restated Declaration of Restrictions and any amendments thereto.

15. **"Director"** means a member of the Board.

16. **" Dwelling "** means a residential structure or structures, including any enclosed yard, balconies, patio areas and garages and located on a Separate Interest.

17. **"Eligible Lender"** means a holder, insurer or institutional guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or institutional guarantor and the address or Lot number on which it holds a First Mortgage, and requesting notice to which such Eligible Lender is due under the Governing Documents.

18. **"Governing Documents"** [Civil Code §1351(j)] means this Declaration and any other documents, such as the Articles, Bylaws, or Rules and Regulations, that govern the operation and conduct of the Association and its Members.

19. **"Improvement"** means any structure or appurtenances thereto of every type and kind, including but not limited to, Buildings, walkways, sprinkler pipes, carports, swimming pools, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, exterior surfaces of any visible structure and the paint or finish on such surfaces, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

20. **"Law"** means any federal, state or local statute, law, ordinance, rule or regulation, or a decision by a court or administrative panel that has the force of law.

21. **"Lot"** - See "Separate Interest."

22. **"Member"** means every Person or entity entitled to Membership in the Association as provided in this Declaration or in the Bylaws.

23. **"Membership"** means the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Governing Documents.

24. **"Mortgage"** means a mortgage or deed of trust encumbering a Separate Interest or any other portion of the Development. "First Mortgage" means a Mortgage that has priority over all other Mortgages and liens encumbering the same Separate Interest or other portions of the Development.

25. **"Mortgagee" or "Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any institutional guarantor or insurer of a Mortgage. "Institutional

Mortgagee" means a Mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state Law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Veterans Administration ("VA"), Federal Housing Administration ("FHA"), Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Government National Mortgage Association ("GNMA"). "First Mortgagee" means a Mortgagee that has priority over all other Mortgagees or holders of Mortgages or liens encumbering the same Separate Interest or other portions of the Development. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

26. **"Mortgagor"** means a Person who mortgages his, her, or its property to another (*i.e.*, the maker of a Mortgage), and shall include the trustor of a deed of trust.

27. **"Notice and Hearing"** means notice to an Owner and an opportunity for the Owner to be heard, prior to the imposition of any fine, penalty or other disciplinary measure, in the manner set forth in the Bylaws.

28. **"Officer"** means an officer of the Association.

29. **"Owner"** means the Record owner or holder of fee title to a Separate Interest, and any contract sellers under Recorded contracts of sale. "Owner" shall not include any Persons or entities who hold an interest in a Separate Interest merely as security for performance of an obligation. For purposes of exercising Membership rights and incurring Membership obligations, if an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the Membership rights attributable to the corporation. If an Owner is a trust, the trustee may exercise the Membership rights attributable to the trust unless otherwise designated in writing by the trustee.

30. **"Palms Models"** mean the Buildings on certain adjacent Lots as described in this paragraph. The Palm Model A consists of attached Buildings or duplex units located on the following pairs of Lots: 233-234, 239-240, 253-254, 269-270, 287-288 and 315-316. The Palm Model B consists of attached Buildings or duplex units located on the following pairs of Lots: 29-30,¹ 209-210, 221-222, 235-236, 243-244, 249-250, 265-266, 277-278, 307-308, 311-312, 317-318, 329-330.

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

32. **"Project" or "Development" or "Property" or "Properties"** [Civil Code §§1351(k) & 1353] means the Common Interest Development which is a Planned Development as described herein, including all Improvements thereon and means the real property described in Recital "A" above.

33. **"Record" or "File" or "Recording"** means, with respect to any document, the recording or filing of such document in the Office of the County Recorder of San Diego County, California.

34. **"Reserves" or "Reserve Account"** [Civil Code §1365.5(c)] means funds that the Board has identified from the Association's annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association, under the Governing Documents, is obligated to maintain.

1. I want to be sure these are included in Palms Model B. Call Jean Delmar or Ken Kelley and check with them.

35. **"Resident"** means any Person who resides, temporarily or permanently, in any Separate Interest.

36. **"Rules and Regulations" or "Rules"** means any Rules and Regulations for the Association regulating the use of the Separate Interests, the Common Area or the Development and any facilities located thereon adopted by the Board pursuant to Subsection 5.6 herein.

37. **"Separate Interest" or "Lot"** [Civil Code §1351(1)(3)] means a separate interest in space as defined in California Civil Code Section 1351 and means all the Lots within the Development, including all Improvements now or hereafter built or installed thereon, with the exception of the Common Area.

38. **"Voting Power"** means the total number of votes eligible to be cast in the Association based on one vote per Separate Interest, less the votes of any Separate Interest whose voting rights have been suspended.

EXHIBIT B - MAINTENANCE DUTIES

COMPONENT(S)	Owner	Association
Owner Lot, Residential Building, Garage & Improvements, unless otherwise specified below	X	
Building Components - Maintenance, Repair and Replacement of Slab and Foundation, Bearing Walls, Studs, Framing, Tie-Downs, and Other Structural Components of the Building	X	
Drainage Systems on Lots	X	
Driveways / Garage Aprons on Lots	X	
Fences on Lots (<i>Also See Party Walls and Shared Fences</i>)	X	
Flashing & Weatherstripping - Windows and Doors	X	
Glass Doors, Sliding	X	
Glass Surfaces, Exterior	X	
Gutters & Downspouts, Owner-Installed - Maintenance (Except Painting), Repair and Replacement (Except Gutters on those Lots defined as "Palms Models")	X	
Gutters & Downspouts, Owner-Installed - Painting (<i>See Association duties farther below</i>)		
Landscaping of Lots, except Association does spot re-seeding of lawns in front yards	X	
Improvements, Additions and Alterations Installed by Owner	X	
Lighting Fixtures - Building Exterior	X	
Mailbox (but excluding Mailbox Posts)	X	
Party Walls and Shared Fences (cost shared by affected owners)	X	
Patio Covers	X	
Sidewalks on Lots to Building Entrances	X	
Wood Trim and Fascia on Building Exterior - Maintenance, Repair and Replacement (but excluding routine painting)	X	
Utility Lines, including Gas, Water, Sewer, Electrical and other Utility Lines, above or below ground and inside the Owner's home, to the extent not maintained the applicable utility company or service provider.	X	
Party Walls or Shared Fences built on the line dividing two Lots - shared between the two affected Owners	X	
Stucco Repair & Replacement	X	
Termite Eradication	X	

COMPONENT(S)	Owner	Association
Yards - Back and Side Yards	X	
Common Area & Improvements, unless otherwise specified above or below		X
Common Area Clubhouses and Other Recreational Facilities, including: Maintenance, Repair and Replacement and Painting of Structural Components, Exterior and Interior Surfaces, Cabinets & Counters, Flooring Coverings (Carpet, Vinyl, and Ceramic Tile), Heaters (Forced Air), Interior Furnishings, Lighting (Wall & Post), Kitchen Appliances, Restrooms, Saunas		X
Common Area Pools and Spas including: Pool and Spa Surface & Tile, Coping Tiles, Heater, Heater Exchange Tubes, Filters, Pumps & Motors, Chlorinating Systems, Electric Controls, Pool Furnishings, Deck Replacement/Repair/Coating, Wrought Iron Pool Fences and Gates		X
Common Area Open Space Components, including: Brow Ditches; Drainage Facilities; Freeway Barrier Wall; Backflow Valves; Irrigation Systems, Lighting Fixtures, Timers, Valves and Equipment; Landscaping (including tree replacement and lawns); Walkways; Weed and Pest Eradication		X
Residential Lot Front Yard Landscaping, including: Mowing, Edging, Spot Seeding, Irrigation of Front Lawn Only, not Beds and Plantings		X
Residential Building and Garage on each Lot - Exterior Surface Maintenance, but limited to the following: Replacement When Needed of Developer-installed Gutters & Downspouts on those Lots containing the "Palm Models;" Gutter and Downspout Painting on All Residential Buildings; Exterior Caulking; Painting Exterior Stucco Only; Painting Only of Exterior Wood Trim and Other Exterior Wood Surfaces, including Exterior Surfaces of Wooden Doors; Roof - Flashing, Underlayment, Built-up Capsheet, Fiberglass Shingles, Roof Decking and Sheathing (but not for termite damage); Flashing of Roof Penetrations; Mailbox Posts (but excluding Mailbox itself)		X



Lindsay Management Services

A Division of Corporate Management Consultants, Inc.

January 6, 1997

To: Whom It May Concern

RE: **ALTAMIRA MANAGEMENT ASSOCIATION #1**

Please be informed that the C.C.&R. sections referring to Age Restrictions are unenforceable. In accordance with Federal senior community regulations, the Association is no longer able to restrict the age of residents.

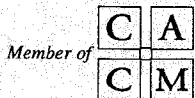
Sincerely,

FOR: THE BOARD OF DIRECTORS

for Katherine Smith
BY: Lesley Finch
Chief Executive Officer

LF:ks

(f:\docs\0400\memo\memo1.98)



North County: (760) 436-1144
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