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RECORDING REQUESTED BY and
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**Rancho Monserate Country Club
Homeowners Association
4650 Dulin Rd.
Fallbrook, CA 92028**

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**SECOND AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT
OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

RANCHO MONSERATE COUNTRY CLUB

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RANCHO MONSERATE COUNTRY CLUB

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**SECOND AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
RANCHO MONSERATE COUNTRY CLUB**

THIS SECOND AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Declaration”) amends and fully restates the Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded on February 1, 2002 as Document No. 2002-0089654 in the official records of the San Diego County Recorder’s Office, as amended by that certain First Amendment to the Amended and Restated Declaration of Covenants, conditions and Restrictions, recorded on November 29, 2011, as document number 2011-0633610 (collectively, the “**Amended Declaration**”) and any and all previous versions, amendments, or modifications thereto which Amended Declaration, is hereby extinguished and superseded by this Declaration which is made this 22 day of June, 2017, by Rancho Monserate Country Club Homeowners Association, Inc., a nonprofit mutual benefit corporation, its successors and assigns, hereinafter collectively referred to as “**Association**”, with reference to the following facts:

WHEREAS, this Declaration was approved by the affirmative vote, in person or by written ballot, of at least fifty-one percent (51%) of the Total Voting Power (as defined herein) of the Association.

WHEREAS, on or about the date of recordation of this Declaration, in the Office of the County Recorder of the County of San Diego, State of California, the Association manages, controls and operates that certain real property described on the Map and Condominium Plan as defined herein, commonly known as Rancho Monserate Country Club hereinafter referred to as the “**Community**.”

WHEREAS, pursuant to the general plan set forth in this Declaration, the Community has been subdivided into two hundred thirty-two (232) units to create a common-interest condominium project (the “**Community**”) subject to the provisions of the *Davis-Stirling Common Interest Development Act, Civil Code Section 4000 et. seq.*

WHEREAS, it is the desire and intention of Association that interests in said real property be sold and conveyed to various individuals and subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens, and charges between it and the acquirers or users of said property as hereinafter set forth.

NOW, THEREFORE, the Association hereby declares that the Community shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, sold, mortgaged and improved only upon and subject to the following uniform covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable

servitudes, all of which are hereby declared, established, expressed and agreed: (1) to be in furtherance of a plan for the subdivision and sale or lease of Units in the Community; (2) to be for the benefit and protection of the Community, its desirability, value and attractiveness; (3) to be for the benefit of Owners, as hereinafter defined, in the Community; (4) to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Community or any portion thereof; (5) to inure to the benefit of every portion of the Community and any interest therein; and (6) to inure to the benefit of and be binding upon each successor and assignee in interest of each Owner. Any conveyance, transfer, sale, assignment, lease or sublease made by Association or an Owner of a Condominium in the Community will, and hereby is, deemed to incorporate by reference the provisions of this Declaration, including, but not limited to, covenants, conditions, restrictions, limitations, grants of easements, rights-of-way, rights, liens, charges and equitable servitudes contained herein. The provisions of this Declaration or any other Governing Document shall be enforceable at law or any Owner or its successors in interest, and shall also be enforceable by the Association, its Board of Directors or any Person, firm, corporation or other association duly authorized by the Association or its Board of Directors to enforce all or any one or more of the provisions hereof.

ARTICLE I **DEFINITION OF TERMS**

WHENEVER used in this Declaration, the following terms shall mean:

1.1 “Annual Budget Report” means that certain report prepared and distributed in accordance with Section 9.2.A of the Bylaws.

1.2 “Architectural Committee” means the committee, if any, discussed in Section 6.10 of this Declaration appointed by the Board of Directors to enforce the Architectural and Landscaping Rules.

1.3 “Architectural Guidelines” shall mean the separate and independent document adopted by the Board of Directors and/or the Architectural and Landscaping Committee and incorporated herein by reference which sets forth the rules and guidelines for the Architectural Guidelines for the Community.

1.4 “Articles” means and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.5 “Assessment Lien” shall have the meaning as set forth in Section 5.13 of this Declaration.

1.6 “Assessments” means that portion of the cost of maintaining, improving, repairing, operating and managing the Community which is to be paid by each Condominium Owner as

determined by the Association, including, but not limited to, Regular Assessments, Utility Assessments, Special Assessments, Individual Special Assessments and Emergency Assessments as defined in Article V.

1.7 “Association” means and refers to the Rancho Monserate Country Club Homeowners Association, Inc., a California nonprofit mutual benefit corporation, consisting of all Owners of Condominiums in the Community, which entity shall have the duty of maintaining, operating, and managing the Common Area of the Community in the manner and to the extent provided for herein. Each Owner shall become a member of the Association contemporaneously with the acquisition of his or her Condominium without further documentation of any kind.

1.8 “Board of Directors” or “Board” means and refers to the governing body of the Association.

1.9 “Board Member” shall mean and refer to the then current members of the Board of Directors.

1.10 “Bylaws” means and refers to the First Amended and Restated Bylaws of the Association, as amended from time to time.

1.11 “County” means and refers to County of San Diego, in the State of California.

1.12 “Common Area” means all of the Community (excluding the Units and the Homes) subject to all easements and rights of uses described herein, including the Exclusive Use Areas and/or in the document of conveyance through which each Owner acquired his or her interest. For purposes of this Declaration, equipment which is part of a discrete and complete system serving only one (1) Condominium shall be a part of such Condominium and not part of the Common Area.

1.13 “Common Expense” means and includes the actual and estimated expenses of operating the Common Area and any reasonable reserve for such purposes as found and determined by the Board of Directors, and all sums designated Common Expenses by or pursuant to the Governing Documents.

1.14 “Community” means and refers to the entire real property above described, including all structures and improvements erected or to be erected thereon, excluding Homes.

1.15 “Condominium” means the separate interest of a condominium as defined in *Sections 783 and 4125(c) of the California Civil Code*, consisting of title to a Unit and an undivided interest in the Common Area and shall include membership in the Association and certain exclusive and nonexclusive easements for use, ingress, and egress over the Common Area.

1.16 “Condominium Plan” means and refers to the recorded plan of the Units in the Community which identifies each Unit and shows its dimensions pursuant to the Davis-Stirling Act. The Condominium Plan was recorded in the Official Records of San Diego County, State of California on July 10, 1985 as Document Number 85-246501.

1.17 “Davis-Stirling Act” shall mean and refer to that portion of the California Civil Code commonly known as the Davis-Stirling Common Interest Development Act located at *Civil Code Section 4000 et seq.* Any amendments, modifications, deletions, replacements, or renumbering of such Act shall automatically amend or modify the applicable provision in this Declaration corresponding to such code section.

1.18 “Declaration” means and refers to this enabling Declaration, as may be further amended or supplemented from time to time.

1.19 “Delinquent Assessment Collection Policy” shall mean the policies adopted by the Board of Directors, from time to time, and incorporated herein by reference which sets forth the policy for the collection of delinquent Assessments.

1.20 “Directors” shall mean those persons elected by the Members to serve on the Board of Directors.

1.21 “Election Policy” means the voting and election policies adopted by the Board of Directors, from time to time, and incorporated herein by this reference which sets forth the policy for elections of the Board of Directors.

1.22 “Emergency Assessments” means those Assessments as specifically defined in Section 5.6 of this Declaration.

1.23 “Eligible Mortgage Holders” means a First Lender or an insurer or governmental guarantor of a First Mortgage on any Condominium who has requested notice of certain matters from the Association pursuant to Section 13.1.

1.24 “Exclusive Use Area” means, with respect to each Unit, the exclusive right and easement to use such portion(s) of the Common Area designated on the Condominium Plan as “Exclusive Use Area,” except as to easements and facilities maintained by the Association.

1.25 “FNMA” means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and any successors to such corporation.

1.26 “FHA” means the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United

States government which succeeds the FHA's function of insuring notes secured by Mortgages on residential real estate.

1.27 "FHLMC" means Federal Home Loan Mortgage Corporation, a government-sponsored enterprise, and any successors to such corporation.

1.28 "First Lender" means any person, entity, bank, savings and loan association, insurance company or financial institution holding a recorded First Mortgage on any Unit.

1.29 "First Mortgage" means the deed of trust or mortgage recorded against an Owner's Unit by a First Lender.

1.30 "General Delivery" or "General Notice" shall mean the applicable document is delivered to the Owner by one of the following methods: (i) any method provided for delivery of an Individual Delivery, (ii) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods in this Section 1.30; or (iii) posting the printed document in a prominent location that is accessible to all Owners, if the location has been designated for the posting of general notices by the Association's Annual Policy Statement (as is defined in the Bylaws).

1.31 "Governing Documents" means this Declaration and the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Community, including, but not limited to, the Map, the Articles, the Bylaws, the Condominium Plan, the Rules and Regulations, Policies for Older Persons Housing Designation, the Architectural Guidelines, as adopted by the Board of Directors or the Association and each as amended from time to time.

1.32 "Guest" shall mean and include all agents, employees, and persons sharing the Home or other invitees, permittees, licensees or other persons in the Community at the invitation, request or tolerance of an Owner.

1.33 "Home" means any residential structure, the construction of which is subject to the provisions of *Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code*, and specifically, *Sections 18007 and 18008*.

1.34 "Individual Delivery" shall mean the applicable document is delivered to the Owners by one of the following methods: (i) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the Owner at the address last shown on the books of the Association; (ii) electronic mail, facsimile or other electronic means, if the Owner has consented, in writing, to that method of delivery which consent may be revoked, in writing by the Owner.

1.35 “**Individual Special Assessment**” shall mean and refer to a charge against a particular Condominium made for the purpose of obtaining reimbursement of certain expenditures of the Corporation, pursuant to Article IV.

1.36 “**Map**” means and refers to Map No. 11281 recorded on July 10, 1985 of Official Records of San Diego County, State of California.

1.37 “**Member**” means and refers to the Owners of a Condominium who hold a membership in the Association as provided herein.

1.38 “**Mortgage**” includes a deed of trust as well as a mortgage.

1.39 “**Mortgagee**” is the holder of a Mortgage, including a beneficiary or a holder of a deed of trust.

1.40 “**Mortgagor**” includes the trustor of a deed of trust and a Mortgagor.

1.41 “**Notice**” shall have the meaning as set forth in the Bylaws. The requirements for notice will vary based upon the person upon whom notice is to be given and the methodology used to provide such Notice.

1.42 “**Older Persons Housing Development**” means a community that qualifies as “Housing for Older Persons,” pursuant to *California Government Code §12955.9*.

1.43 “**Owner**” means each person on title for a Condominium who shall be a member of the Association, including, without limitation, successors, assigns and devisees of Owners, but excluding Persons having an interest merely as security for the performance of an obligation. In the case of a Condominium being held in trust or another similar such estate planning device, “Owner” shall mean the trustee of said trust. .

1.44 “**Person**” means a natural person, a corporation, a partnership, a trustee or other legal entity.

1.45 “**Rules and Regulations**” shall mean the separate and independent document entitled “Rules and Regulations” as adopted by the Board of Directors and incorporated by this reference herein (in its original draft or as amended), as may be amended from time to time, which sets forth the policies and procedures for enforcing the Governing Documents.

1.46 “**Policies for Older Persons Housing Designation**” means the separate and independent document entitled “Policies for Older Persons Housing Designation”, which policy may be amended from time to time by the Board of Directors without the need to amend this Declaration.

1.47 “Qualified Permanent Resident” means a person who is either (i) residing with a Qualifying Resident that is forty-five (45) years of age or older, or (ii) a spouse, significant other, cohabitant or person providing primary physical care or economic support to the Qualifying Resident.

1.48 “Qualifying Resident” means a person fifty-five (55) years of age or older in an “Older Persons Housing Development.”

1.49 “Reasonable Cost of Collection” shall mean and include (i) reasonable charges imposed to defray the cost of preparing and mailing demand letters; (ii) reasonable attorney’s fees incurred; (iii) recording costs; (iv) costs incurred with title costs or foreclosure services procedures and (v) costs associated with small court claims action.

1.50 “Regular Assessments” means that Assessment determined and levied in accordance with Section 5.4 of this Declaration.

1.51 “Resident” means any lawful person residing in a Condominium, including, without limitation, an Owner and/or Tenant, if permitted.

1.52 “Special Assessment” means that Assessment levied by the Association in accordance with Section 5.5 of this Declaration.

1.53 “Tenant” means a person renting or leasing a Condominium from an Owner.

1.54 “Total Voting Power” means, unless otherwise specifically indicated, the vote or written assent of a bare majority of the total membership of the Association as well as the vote or written assent of a prescribed majority of Members.

1.55 “Unit” means and refers to the separate air space portion of a Condominium, the boundaries of which are shown and described on the Condominium Plan, as further defined in the Davis-Stirling Act. The Units are numbered 1 through 232 inclusive. “Unit” is commonly referred to as a space or lot and shall have the same meaning as “Living Unit” as defined on the Condominium Plan.

1.56 “Unit Designation” shall mean the number, letter, or combination thereof or other official designation(s) shown on the Condominium Plan. Each Unit is identified by separate number on the Condominium Plan.

1.57 “VA” means and refers to the Department of Veterans Affairs of the United States of American and any department or agency of the United States government which succeeds to VA’s function of issuing guarantees of notes secured by Mortgages on residential real estate.

As used in this Declaration, the singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

ARTICLE II
DESCRIPTION OF COMMUNITY AND IMPROVEMENTS

2.1. Condominium Plan Best Authority. The following description of the Community is intended for information purposes only, and in the event of any conflict between this description and the Condominium Plan, said Condominium Plan shall be deemed to conclusively control.

2.2. Community Description. The Community consists of that certain real property located in the County of San Diego, State of California. The Community is a "Condominium Project" within the meaning of the Davis-Stirling Act consisting of Condominiums.

2.3. Community Boundaries. The Community has within its boundaries various Units Common Area and Exclusive Use Areas, as shown and described on the Condominium Plan.

2.4. Description of Individual Condominium. Each Condominium within the Community which shall be offered for sale shall consist of a fee simple interest in and to a particular Unit, together with an Exclusive Use Area, an undivided interest as a tenant-in-common in and to the Common Area, a nonexclusive easement of ingress and egress and membership in the Association. The Units, Exclusive Use Areas and Common Area interest are as follows:

(A) **Units.** Each of the Units as separately shown, numbered and designated in the Condominium Plan consists of airspace as designated on said Condominium Plan. The Condominium does not include central services, pipes, ducts, conduits, wires or other utility installations outside the Condominium or lying beneath the Condominium, except the outlets thereof. Each Unit and Exclusive Use Area includes the utility installations located within its boundaries of which the Owner has exclusive use including, without limitation, hot water heaters, Unit heaters, lighting, fixtures and air-conditioning units which are located entirely within the Unit and Exclusive Use Area they serve. The Unit does not include those areas and those things that are designated as "Common Area" in the Condominium Plan. Each Unit and Exclusive Use Area is subject to such encroachments as are situated upon such Unit and Exclusive Use Area, whether the same now exists or may be later caused or created. Each Unit shall have appurtenant thereto the exclusive right and easement to use and maintain the portion of the Common Area designated as Exclusive Use Area as defined in the Condominium Plan and granted to each Owner in his/her respective deed.

(B) **Common Area.** Each Owner shall have, as appurtenant to his/her Unit, an undivided interest in the Common Area. The ownership of each Condominium shall include a Unit, an Exclusive Use Area and such undivided interest in the Common Area. Each Unit shall have appurtenant to it a nonexclusive easement for ingress, egress and support through the Common Area, excluding the Exclusive Use Areas appurtenant to other Units. The Common Area appurtenant to each Unit is declared to be permanent in character and cannot be altered without consent of all Owners affected, as expressed in an amended declaration. Each Owner may use the Common Areas, except the Exclusive Use Areas appurtenant to other Units, in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owner.

2.5. **Owner's Rights of Enjoyment of Common Area.** Every Owner shall have a right and easement in and to the Common Area, except the Exclusive Use Areas appurtenant to other Units, which shall be subject to the following provisions:

(A) The right of the Association to suspend the voting rights and the right to use the recreational facilities, by an Owner for any period during which any Assessment against his Condominium remains unpaid; and for a period not to exceed thirty (30) calendar days for any non-continuing infraction of the Governing Documents or if the infraction of the Governing Documents continues, then for the duration of such infraction; provided, however, the Owner is given notice and a hearing by the Board of Directors of the Association which satisfies *California Corporations Code Section 7341*.

(B) The right of the Association to impose a monetary penalty upon an Owner to reimburse the Association for costs incurred by the Association to repair any damage to Common Areas or facilities as a result of or condition caused by violation of any of the limitations, restrictions, conditions and covenants by such Owner. This right shall be in addition to charges imposed against an Owner because of delinquent Assessments and/or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in its effort to collect delinquent Assessments.

ARTICLE III **MEMBERSHIP IN THE ASSOCIATION**

3.1. **Qualification.** The Owners of the Units shall constitute an owners Association. Each Owner of a Unit, shall be a member of the Association. The Association membership shall be appurtenant to Unit ownership, and each Owner of a Unit shall automatically be a member of the Association. Ownership of a Unit within the Community shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until its ownership interest in the Unit in the Community ceases, at which time its membership in the Association shall automatically cease. Persons or entities that hold an interest in a Unit merely as security for performance of an obligation are not to be regarded as Members.

(A) **Age Restriction.** The Community is “age-restricted” per the guidelines of the Housing for Older Persons Act of 1995, as amended by Public Law 104-76. Regardless of whether the Condominium is Owner-occupied or Tenant-occupied, the persons residing in the Condominium must meet the age requirements set forth herein, in the above-referenced act and the Policies Older Persons Housing Designation. Accordingly, at least one (1) person must be a Qualifying Resident, meaning they must be fifty-five (55) years of age or older. All other occupants must be either a Qualified Permanent Resident or otherwise be approved by the Board of Directors in accordance with the Policies for Older Persons Housing Designation, which shall further define and outline the age restriction requirements.

(B) **Exceptions to the Age Restriction.** Exceptions to the age restriction policy are set forth in the Policies for Older Persons Housing Designation, as may be amended by the Board from time to time.

(C) **Prior Approval of Prospective Purchasers and Occupants.** The Board, either directly or through a management company, if any, shall have the right, but not the obligation, to require that any and all potential Residents obtain approval prior to a prospective purchaser’s purchase or prospective occupant’s residing of a Home that will remain in the Community. Approval cannot be withheld if the prospective purchaser or occupant has the financial ability to pay the Assessments provided for herein and satisfies the age requirements provided for herein, unless the Board reasonably determines that the persons who will reside in the Home do not satisfy the age restrictions set forth herein, or that based on the prospective purchaser’s prior residencies, he or she will not comply with the Governing Documents of the Community.

3.2. Control of Common Area. The Common Area, excluding the Exclusive Use Areas, shall be managed and controlled by the Owners in common through their membership in the Association. The Association shall have the responsibility to manage and maintain, or cause to be maintained, all of the Common Area, excluding the Exclusive Use Areas, in a state of high quality so as to keep the whole Community in a first-class condition and in a good state of repair.

3.3. Administration of the Community. The Owners, together with all parties bound by this Declaration, covenant and agree that the administration of the Community shall be in accordance with the provisions of the Governing Documents, and amendments, changes and modifications thereto, as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and the provisions of the Bylaws or said Rules and Regulations, the provisions of this Declaration shall prevail. To the extent to which the provisions of the Bylaws and Rules and Regulations are consistent with this Declaration, each and every provision in the Bylaws and the Rules and Regulations are incorporated herein by this reference and made a part hereof as though set forth verbatim.

3.4. Suspension of Privileges. The Board shall have the right to suspend any Owner's membership in the Association, provided that such suspension is done in good faith and in a fair and reasonable manner and is consistent with *California Corporations Code Section 7341* and the Davis-Stirling Act. The Board shall follow the process for suspension of an Owner's membership in the Association or any other remedy sought against an Owner as is outlined in the Governing Documents, including the Policies and Procedures and the Davis-Stirling Act.

3.5. Indemnification for Performance of Duties. Every Director, Officer and Member of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorneys' fees) actually, reasonably and necessarily incurred by or imposed upon such Persons in connection with any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which such Director, Officer or Member may be involved as a party or otherwise arising directly from having been a Director, Officer or Member of the Association, whether or not such Persons continue in such capacity at the time of the incurring or imposition of such costs, expenses or liabilities. Such indemnification shall not apply to matters as to which he or she shall be finally adjudged in such action, suit, proceedings, investigation or inquiry to be liable for willful misconduct or negligence toward the Association in the performance of his or her duties, or in the absence of such final adjudication, to which a determination has been made of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to, and not in limitation of, all rights to which such person may be entitled as a matter of law and shall inure to the benefit of the legal representative of such Person.

3.6. Transfer of Membership. The Association membership of each Owner shall be appurtenant to the Condominium giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way, except upon the transfer of title to said Condominium and then only to the transferee of title to said Condominium. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium shall operate automatically to transfer appurtenant membership in the Association to the new Owner of the Condominium.

3.7. Commencement of Voting Rights. An Owner's right to vote shall commence upon the close of escrow transferring title of the Unit to Owner(s). All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

3.8. Number of Votes. The Association shall have one (1) class of memberships consisting of each of the Units. Each Unit shall, regardless of the number of Owner(s) thereof, have only one (1) vote. No fractional votes shall be allowed.

ARTICLE IV **BOARD OF DIRECTORS**

4.1. Generally. The Board of Directors shall consist of five (5) members to be elected

by the Members pursuant to the Bylaws. The Board Members shall serve two (2) year terms with Members of the Board of Directors elected to staggered terms, such that three (3) Board Members are elected in even-numbered years, and two (2) Board Members are elected in odd-numbered years. Each Board Member may only serve two (2) consecutive two (2) year terms. The Bylaws shall set forth the provisions relating to the election, removal and replacement of the Board of Directors.

Provided, however, prior to the adoption of this Declaration, the Board of Directors consisted of seven board members. To accommodate the reduction in the size of the Board of Directors, the at the 2017 election, there shall be elected two (2) Board Members, at which time the Board shall consist of six (6) Board Members; and at the 2018 election, there shall be elected three (3) Board Members, at which time the Board will then consist of five (5) Board Members. In the event of a resignation or removal of a Board Member from the date of this Declaration through the 2018 election, a replacement shall not be appointed to the Board of Directors unless the number of Board of Directors falls below five (5) Board Members.

4.2 Meetings. The Board of Directors shall meet at least quarterly, in accordance with the Bylaws; provided, however, that the Board of Directors may elect, by resolution, to hold Regular meetings on a more frequent basis. The Board of Directors shall also meet at the call of the President, or if he or she is absent or unable or refuses to act, by any three (3) Directors. The Secretary shall keep summarized written minutes of such meetings of the Board of Directors. Regular meetings of the Board of Directors shall be held at a time and place within the Community, fixed by the Board of Directors from time to time or otherwise as set forth in the Bylaws. A special meeting of the Board of Directors may be called by written notice signed by the President of the Association or by any two (2) members of the Board of Directors, other than the President. The Board shall also call a Special Meeting upon written request of at least five percent (5%) of the Total Voting Power of the Association. Regular and special meetings of the Board of Directors shall be open to all Members of the Association, provided that Members who are not on the Board of Directors may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board of Directors (as defined in the Bylaws). The Board of Directors may, with approval of a majority of a quorum of its Directors (as defined in the Bylaws), adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, matters that relate to the formation of contracts with third parties, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

4.3 Authority of the Board of Directors. Prior to the organizational meeting and until their successors are elected, the initial Board of Directors or it's duly appointed successors shall manage the affairs of the Association. The Board of Directors, as constituted from time to time, shall at all times be responsible for the day-to-day operation and management of the affairs of the Association. The Board of Directors shall have the sole power and duty to perform the duties as set forth in this Declaration and the Bylaws, the *California Corporations Code*, the Davis-

Stirling Act or other statute, ordinance, or regulation, as requiring the vote or assent of Members of the Association, or a given percentage thereof. Without limiting the generality of the foregoing, the Board of Directors shall have each and every power and duty set forth in this Declaration and the Bylaws.

4.4 Elections Which Require a Secret Ballot. Notwithstanding any other law or provision of any of the Governing Documents, elections or votes by Owners regarding (i) Assessments legally requiring a vote of the Owners, (ii) election and removal of directors, (iii) amendments of the Association's Articles of Incorporation, Bylaws or the Declaration, or (iv) grants of exclusive use of the Common Area shall be held by secret ballot in accordance with the Election Policy.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

5.1. Creation of Lien - Personal Obligation of Assessment. The Association shall have the power to establish, fix and levy Assessments against each Owner and to enforce payment of such Assessments in accordance with the provisions of this Declaration and pursuant to the Davis-Stirling Act. Each Owner of any Condominium within the Community by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree: 1) to pay to the Association: (a) Regular Assessments; (b) Utilities Assessments, if applicable; (c) Special Assessments; (d) Individual Special Assessments; (e) Emergency Assessments, if applicable; (f) Reasonable Costs of Collection; and (g) any and all such Assessments to be fixed, established and collected from time to time, as hereinafter provided; and 2) to allow the Association to enforce any Assessment Lien established under this Declaration by any means authorized by California law or this Declaration.

The Assessments, together with such interest, late charges and Reasonable Costs of Collection, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, which lien is to be created and enforced in accordance with the provisions of this Article 5. Each such Assessment (and all other Assessments levied in accordance with this Declaration), together with late charges, interest and Reasonable Costs of Collection, shall also be the joint and several personal obligation of each Owner of such Condominium at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to any Owner's successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments, after paying all

amounts properly charged against such Assessments, shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

5.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety and welfare of all the Owners and other Residents in the Community and to enable the Association to perform its obligations under California law and the Governing Documents.

5.3. Due Dates of Assessments. Regular Assessments shall be paid by each Owner, in equal monthly installments in advance, on the first day of each month. The payment of Assessments shall commence for Owners, upon the Close of Escrow for each particular Unit, and be prorated through escrow to the date of Close of Escrow for the month in which escrow closes. Individual Special, Special and Emergency Assessments shall be due on the date indicated in the notice imposing the Individual Special, Special or Emergency Assessment or indicated on the ballot presenting the Special Assessment to the Owners who are Members in good standing of the Association for approval.

5.4. Regular Assessments. Except as provided in this Section 5.4 and Section 5.5 below, and pursuant to the Davis-Stirling Act, the Association shall levy Regular and Special Assessments sufficient to perform its obligations under the Governing Documents.

(A) **Amount of Regular Assessments.** The Board of Directors shall establish and levy Regular Assessments in an amount that the Board of Directors estimates will be sufficient to raise funds needed to perform the duties of the Association and shall include a portion for reserves in such amount as necessary to fully fund reserves to meet the costs of the future repair, replacement or additions to the Common Areas that the Association is obligated to maintain and repair. Regular Assessments shall ordinarily be levied against each Member in accordance with the ratio of the number of Condominiums owned by each Member to the total number of interests subject to Regular Assessments; i.e., 1/232. All Regular Assessments shall be equal in amount. Although the amount of such Regular Assessments will be determined on an annual basis, the payment thereof shall be due and payable at least monthly, as shall be set forth by the Board of Directors from time to time.

(B) **Increase of Regular Assessment by the Board of Directors.** Annual increases in Regular Assessments for any fiscal year as authorized by this subsection 5.4(B) shall not be imposed unless (1) the Board of Directors has prepared and distributed the Annual Budget Report, or (2) has obtained the approval of the Members of the Association in good standing, constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with *California Corporations Code Sections 7510-7517 and Section 7613*. Notwithstanding the foregoing in this subsection (B), the Board of Directors may not impose a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year without the prior approval of the Members of the Association in good standing constituting a quorum (pursuant to the Bylaws) casting a

majority of the votes at a meeting or election of the Association conducted in accordance with *California Corporations Code Sections 7510-7517 and Section 7613*. The provisions of this Section 5.4 do not limit Assessment increases for emergency situations as defined in Section 5.6 below.

(C) **Notice of Increase In Regular and/or Special Assessments.** The Association shall provide notice by Individual Delivery to all Owners of an increase in the Regular or Special Assessments of the Association not less than thirty (30) nor more than sixty (60) calendar days prior to the increased Assessment becoming due.

(D) **Certificate of Payment.** The Association shall, upon demand, furnish to any Owner liable for Assessments, a written certificate signed by a Director of the Association or its manager, setting forth whether the Assessments on a specified Condominium have been paid and the amount of delinquency, if any. A reasonable charge not to exceed Fifty Dollars (\$50.00) per certificate may be levied by the Board of Directors for issuance of said certificates. Such certificates shall be conclusive of payment of any Assessment therein stated to have been paid.

5.5. Special Assessments. The Board of Directors, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board of Directors, in its discretion, considers appropriate, including, but not limited to, unanticipated delinquencies, costs of constructions, unexpected repairs or replacements or reconstruction or capital improvements in or on the Common Areas. Special Assessments shall be allocated among all Owners in the same manner as Regular Assessments. For any proposed Special Assessment in any fiscal year, the Board of Directors may not levy Special Assessments which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the prior approval of the Owners who are Members in good standing of the Association and who constitute a quorum as defined in Section 5.4(D); such approval shall be recognized by such Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with *California Corporations Code Sections 7510-7512 and Section 7613*. The provisions herein with respect to Special Assessments do not apply in the case of an Individual Special Assessment levied against a Member or Emergency Assessments.

5.6. Emergency Assessments. Notwithstanding the provisions set forth in Sections 5.4 and 5.5 above, the Association may increase Assessments or levy an Assessment necessary for an emergency situation in amounts that exceed the provisions of Sections 5.4 and 5.5 above. Assessments levied pursuant to this Section are referred to herein as an “**Emergency Assessment**” and are for emergency situations which are deemed to be any of the following:

(A) An extraordinary expense required by an order of a court;

(B) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered; or

(C) An extraordinary expense necessary to repair or maintain the Community or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board of Directors in preparing and distributing the Annual Budget Report.

However, prior to the imposition or collection of an Assessment under this Section, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process; and the resolution shall be distributed to the Members with the notice of Assessment. This Section incorporates the statutory requirements of the Davis-Stirling Act. If the applicable portion of the Davis-Stirling Act is amended in any manner, this Section shall be automatically amended in the same manner without the necessity of amending this Declaration.

5.7. Individual Special Assessments. The Association may levy an “**Individual Special Assessment**” against any Owner for the costs and expenses incurred by the Association to bring the Owner or Owner’s Condominium into compliance with the provisions of the Governing Documents and/or any other charge designated as an Individual Special Assessment, together with attorney’s fees, interests and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Individual Special Assessment. The Board shall have the authority to adopt a reasonable schedule of Individual Special Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies *Section 7341* of the *California Corporations Code* and the Davis-Stirling Act, the Owner fails to cure or continues such violation, the Association may impose an additional monetary penalty each time the violation is repeated by imposing an Individual Special Assessment against such Owner. Individual Special Assessments may be enforced as herein provided.

5.8. Utilities Assessment. In addition to the Regular Assessment, each Owner shall be obligated to pay to the Board of Directors or a designated agent thereof or to the manager, if any, a monthly Utility Assessment for utility services provided by the Association. This Assessment shall be based upon an average usage by all of the Owners; however, the Board of Directors may, in its sole discretion, modify such Utility Assessment such that it will be based upon each Owner’s actual use of said utilities. For the purposes of collection and enforcement, the Board of Directors is entitled to exercise the same rights and remedies as for the Regular and Special Assessments. Utility Assessments shall be due and payable on the first of the month after the month in which the utilities are incurred.

5.9. Maintenance Fund. Assessment charges collected by the Association shall be promptly deposited in a commercial bank account in a bank to be selected by the Board of Directors or by the manager, if any, which said account shall be clearly designated in the name of the Association. The Board of Directors or manager, as the case may be, shall have exclusive control of said account and shall be responsible to the Owners for the maintenance of accurate reports thereof at all times. No withdrawal shall be made from said account, except to pay for the charges and expenses for the common benefit of all Members.

5.10. Reserve Funds. The Association shall maintain an adequate reserve fund for the replacement of the Association's facilities which shall be funded by a portion of the Regular Monthly Assessments rather than by Special Assessments. Except as is further set forth in the Bylaws, the Board of Directors shall not expend funds designated as reserve fund for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components that the Association is obligated to repair, restore, replace, or maintain for which the reserve fund was established.

5.11. Continuing Liability for Assessment. No Owner may exempt himself from personal liability for Assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by it from the Assessment Liens and charges hereof by waiver of the use and enjoyment of the Common Area, or by the abandonment of such Owner's Condominium.

5.12. Delinquent Assessments. Assessments are delinquent fifteen (15) calendar days after they become due. If an Assessment is delinquent, the Association may recover all of the following:

- (A) Reasonable Costs of Collection, including reasonable attorney's fees;
- (B) A late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater; and
- (C) Interest on all sums imposed in accordance with this Section, including, but not limited to, the delinquent Assessment, Reasonable Costs of Collection, attorney's fees and late charges at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) calendar days after the Assessment becomes due.

5.13. Effect of Non-Payment of Assessments - Lien Rights - Remedies of the Association. Subject to Sections 5.13 and 5.14, the Board of Directors shall have the authority to create a lien ("**Assessment Lien**") with power of sale on each separate Condominium to secure payment of the amount of any Assessment whether Regular, Utilities, Individual Special or Special, plus the Reasonable Costs of Collection assessed to the Owner(s) thereof, by complying with provisions of California law and the Association's Governing Documents; provided that no action shall be brought to foreclose such Assessment Lien or proceed under a power of sale less than thirty (30) calendar days after a notice of Assessment Lien is mailed to the record Owner of

such Condominium at his address appearing on the Association records. Such notice of Assessment Lien may be filed and an action may be brought to foreclose the same or exercise the power of sale by the Board of Directors only. Such Assessment Lien and right to foreclosure and sale shall be in accordance with this Declaration and California law and shall be in addition to and not in substitution of all other rights and remedies which the Owners and Board of Directors may have hereunder and by law. In enforcing and collecting delinquent Assessments, the Board of Directors shall follow the Delinquent Assessment Collection Policy, as it may be amended from time to time by the Board of Directors or by the Davis-Stirling Act.

5.14. Assessments Which May Not Become a Lien. Any monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Governing Documents, except for late payments, may not be characterized nor treated as an Assessment that may become a Lien against the Owner's separate interest enforceable by the sale of the interest under *California Civil Code Sections 2924, 2924b and 2924c.*

5.15. Assessments Which May Become a Lien. All Assessments, reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for Reasonable Costs of Collection (including attorneys' fees) incurred in the Association's efforts to collect delinquent Assessments and any monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area caused by an Owner, or the Owner's Guests or Tenants may become a lien against the Owner's separate interest enforceable by sale of the interest under *California Civil Code Sections 2924, 2924b and 2924c.*

5.16. Transfer of Unit by Sale or Foreclosure. Subject to Sections 13.3 and 13.4, the sale or transfer of any Condominium shall not affect the Assessment Lien. If the Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium through and including the date of the transfer. The grantee shall be entitled to a statement from the Association dated as of the date of transfer setting forth the amount of the unpaid Assessment against the Condominium to be transferred, and the Condominium shall not be subject to an Assessment Lien in excess of the amount set forth in the statement; provided, however, that the grantee shall be liable for any Assessment that becomes due after the date of the transfer.

5.17. Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive to the extent of any Assessment Liens created pursuant to this Article V the benefits of any homestead or exemption law of the State of California in effect at the time any installation of Regular Assessments become delinquent or any Assessment Lien is imposed pursuant to the terms hereof.

5.18. Rights of the Board of Directors - Waiver of Owners. Each Owner hereby vests in and delegates to the Board of Directors or its duly authorized representatives the right and power to bring all actions at law or Assessment Lien foreclosures, whether judicially or by power of sale

or otherwise, against any Owner or Owners for the collection of delinquent Assessments in accordance herewith and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Assessments as set forth herein.

5.19. Unallocated Taxes. In the event that any taxes are assessed against the Common Area or the personal property of the Association rather than against the Units, said taxes shall be included in the Assessments made under the provisions of this Article VII and, if necessary, a Special Assessment may be levied against the Unit in the amount of said taxes, to be paid in two (2) installments, thirty (30) calendar days prior to the due date of each tax installment.

5.20. Taxes and Utilities Separately Assessed. Each Owner shall pay any real and personal property taxes separately assessed against his respective Unit and Home (if any) and all utility charges separately metered or charged against his Unit on or before their respective due date; and such payment shall be made by each Owner in addition to and separately from Assessments otherwise payable to the Association by each such Owner.

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

5.22. Exemption from Assessments. All property, if any, dedicated to and accepted by a local public authority or public agency shall be exempt from the Assessments created herein. However, no land or improvement devoted to Unit use shall be exempt from said Assessments.

ARTICLE VI **USE RESTRICTIONS**

In addition to all of the covenants herein contained, the use of the Community and each Condominium therein is subject to the following:

6.1. Condominium Use. No Condominium shall be occupied and used except for residential purposes by the Owners, their social guests or their Tenants, to the extent that Tenants are permitted in the Community. No trade or business shall be conducted; however, the Condominium may be used as a combined residence and executive or professional office by the Owner thereof, as long as such use does not interfere with the quiet enjoyment by other Owners of their Condominiums and such use does not involve entry of business invitees or use of the Community's water or sewer. No tent, shack, trailer, basement, garage or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently; however, nothing herein shall cause a Home to be considered a structure with a temporary character, provided that the Home is properly installed or placed on the Unit.

6.2. Nuisances. No noxious, illegal or seriously offensive activities, including, but not

limited to, activities defined as a nuisance under the County's municipal code, shall be carried in, on, upon or within any Unit or Home situated thereon or in any part of the Community. Additionally, nothing shall be done which is or may become a serious annoyance or nuisance or which may in any way interfere with the quiet enjoyment of any Owner of his or her respective Condominium. Nothing will be permitted which shall in any way increase the rate of insurance for the Community or cause any insurance policy to be canceled, or cause a refusal to renew the same, or which will impair the structural integrity of any building.

6.3. Vehicle Restriction.

(A) There shall be no parking or storage of recreational vehicles including, but not limited to, motor homes, campers, boats, travel trailers, motorcycles, airplanes and similar equipment, except as provided in the Rules and Regulations, as amended from time to time by the Board of Directors. An exception to this Section may be granted by the Board of Directors in its sole discretion when the Owner of the vehicle has no other means of transportation and the vehicle is used on a daily basis.

(B) No commercial vehicles or equipment are to be parked overnight or stored within the Community except vehicles or equipment necessary for the maintenance of the Community.

(C) There shall be no outside storage in the Common Area. No electric, water or other hook-ups shall be permitted.

(D) No motorized vehicles shall be parked in any Common Area, except designated parking areas or as otherwise permitted in the Rules and Regulations of the Association as amended from time to time.

(E) In the event that any inoperable and/or unlicensed vehicle is parked on a Unit for a period of fourteen (14) calendar days or more, the Association shall have the right, either itself or through any other person, to have such vehicle removed from the Community. In such event, the Owner of the Unit shall pay to the Association an amount equal to all direct and indirect costs and expenses incurred by the Association to remove such vehicle from the Community regardless of whether the Owner of the Unit on which the vehicle sits is on title to such inoperable and/or unlicensed vehicle.

6.4. Signs. No business sign or advertising may be displayed in the Common Area, except as permitted by the Rules and Regulations of the Association, as amended from time to time; provided however, the Association shall not prohibit the posting of noncommercial signs which have been exempted by local, state or federal law.

6.5. Animals. Upon approval by the Board of Directors (or the management company), and as may be regulated in the Rules and Regulations, no more than two (2) household pets (consisting of any combination of cats or dogs) may be kept on any Unit, except as provided in the

Rules and Regulations. Fish and caged birds are permitted. Notwithstanding the foregoing, no pet may be kept in the Community which is dangerous, obnoxious or annoying to other Owners or Residents.

The Board may declare an animal to be a nuisance if said animal is unreasonably interfering with the use and enjoyment of other Owners' property and/or if such animal is excessively barking, jumping on people, attacking, biting, acting aggressively toward other animals or people, or otherwise injuring people or other animals. If an animal is declared a nuisance, the Board may then demand its removal from the Community within thirty (30) days. Prior to any determination by the Board that a pet is a nuisance, the Owner or Resident shall be provided notice and an opportunity for a hearing before the Board of Directors.

After making a reasonable attempt to notify the Owner or other Resident (if the Owner does not reside in the Unit), the Association or any Owner or other Resident may cause any unleashed or untagged animal found within the Common Area to be removed by the Association, any Owner or other Resident, and taken to a pound or animal shelter under local jurisdiction by the appropriate authorities. The owner of said animal(s) shall be responsible for all expenses connected with repossessing the animal (s).

6.6. Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Community and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles or storage piles shall be maintained in accordance with the Rules and Regulations of the Association, as amended from time to time.

6.7. Rental or Lease of Unit. An Owner is permitted to lease or rent Owner's Unit upon satisfaction of the following conditions:

- (A) A Unit shall not be permitted to be leased or rented if twenty percent (20%) of the Units in the Community are leased or rented at the time that an Owner desires to lease or rent his or her Unit.
- (B) Any potential Tenant or other occupant of a Unit must be approved by the Association prior to commencement of such occupancy to ensure compliance with the Association's age restrictions as set forth in the Governing Documents.
- (C) A lease to a Tenant shall be in writing, and shall specifically provide that the lease and the Tenant are subject to the Governing Documents of the Association, the lease

shall be for an initial term of not less than six (6) consecutive months, and the Association shall have the right to commence enforcement proceedings against a Tenant or occupant for failure to comply with the Governing Documents. Under no circumstances shall an Owner be permitted to lease or rent to an occupant who does not satisfy the age requirements or exceptions thereto as set forth from time to time in the Association's Governing Documents.

- (D) Tenant shall be obligated to abide by and shall be subject to all terms and conditions of the Association's Governing Documents and Owner shall be liable for the breach or default of its Tenants, including the imposition of any fines.

6.8. No Timeshare/Short Term Rentals. No Condominium in the Community, or any portion thereof, shall be leased, subleased, occupied, rented, sublet or used for or in connection with any (i) short term rental program where renters rent a home for less than a 6 month period, including, AirBnB or VRBO; or (ii) time-sharing agreement, plan, program or arrangement, including without limitation, so called "vacation license," "travel club," "extended vacation" or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Condominium(s) or any portion thereof in the Community rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a pre-established fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. This Section shall not be construed to limit the personal use of any Condominium by an Owner or his or her guests.

6.9. Use of the Common Area by Tenants. All Common Area facilities are for the use of Owners or their Tenants and Guests. Owners are responsible for their Tenants' or Guests' violations of the Rules and Regulations and damage to the Common Area. If an Owner has Tenants residing in his or her Unit and does not also reside in such Unit as his or her primary residence, such Owner shall not use any part of the Common Area.

6.10. Architectural Control. The guidelines set forth herein, and any additional architectural requirements as may be adopted by the Board of Directors from time to time, govern the architecture and landscaping of each Condominium. The Board of Directors may appoint an Architectural and Landscaping Committee, as outlined in the Architectural and Landscaping Rules, to act on behalf of the Board of Directors in compliance with said Architectural and Landscaping Rules; provided, however, that the Architectural and Landscaping Committee shall consist of not less than three (3) nor more than five (5) members.

(A) Committee. The Board of Directors may appoint an Architectural Committee. The Committee shall be comprised of not less than three, nor more than five Members, each of which shall be an Owner of a Unit. Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any Committee member, a successor shall be

selected by the Board or chairperson. Committee Members shall not be entitled to compensation for services performed pursuant hereto; however, may be reimbursed for actual, out of pocket expenses. The Board of Directors shall have the right to remove any Committee Member prior to the expiration of his or her term.

(B) Prior Approval. No Home, building, accessory building, fence, wall, obstruction, exterior wiring, balcony, screen, patio, patio cover, awning, carport, carport cover, garage, pavement, equipment, improvement or structure of any kind, including improvements and modifications within the Home which require a building permit and/or modify the electrical load of the Home, and no landscaping, except ordinary seasonal changes and normal maintenance of patios or yards (collectively such items shall be referred to herein as “**Improvements**”) shall be undertaken, commenced, constructed, installed, altered, remodeled, erected, painted or repainted, nor shall any alteration or improvement of any kind be made thereto, until the same has been approved in writing by the Board of Directors or by the Architectural Committee, if any, appointed by the Board of Directors pursuant to this Section and until full satisfaction of all legal requirements including obtaining permits as may be applicable. The Board of Directors or Architectural Committee may conditionally approve an Improvement prior to the issuance of any required permits, provided that (i) the final approval will only be granted and is subject to Owner obtaining the applicable and required permits at Owner’s sole cost and expense, and (ii) no work shall commence until the final approval has been issued, all permits are issued and any insurance requirements set forth herein or as may otherwise be required by the Board of Directors has been satisfied.

(C) Plans and Specifications. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such Improvements shall be submitted to the Board of Directors or the Architectural Committee, if any, for approval as to quality of workmanship and design and harmony of external design with existing structures, compliance with applicable permit requirements and laws and as to location in relation to surrounding structures, topography and finish grade elevation. Landscaping of patios or yards visible from the street or from the Common Area shall not be undertaken by any Owner until plans and specifications showing the nature, kind, shape and location of the materials have been submitted to and approved in writing by the Board of Directors or by an Architectural and Landscaping Committee, if any, appointed by the Board of Directors.

(D) Committee Review and Approval. The Board and/or Committee shall have the right, but not the obligation, to deny approval of the proposed Improvements if such proposed Improvements to not comply with applicable laws, including California Code of Regulations, Title 25. Owner shall be solely and absolutely responsible for ensuring such Improvements comply with Title 25 and approval for the Improvements by the Board and/or Committee shall not be construed by the Owner that such Improvements do in fact comply with applicable laws.

The Board and/or Committee shall have thirty (30) days from the date of the fully complete submitted plans and specifications, including all reasonable clarifications or additional information

as may be requested, to review the plans and specifications. If the Board or Committee fails to provide a written denial of the Improvements within the thirty (30) day period, Owner may provide written notice of such failure to the Board and/or Committee and if the Board and/or Committee fail to approve or deny within thirty (30) days of such notice, the Improvements shall be deemed approved.

When approving or disapproving a plan submitted to the Board of Directors or the Architectural Committee, if any, such body shall consider, among other things, whether the proposed plan is: (1) consistent with the other improvements in the Community; (2) compliant with the any and all architectural and landscape standard set forth herein or in any rules, as may be adopted or amended from time to time, by the Board of Directors or the Architectural Committee, if any; (3) congruent to the location, size and topography of the Unit on which the changes are to occur; and (4) compatible with any other relevant factors related to the specific request which the Board of Directors or Architectural Committee, in its sole discretion, deems relevant to the preservation of the overall plan for the Community, including, without limitation, the aesthetics of the Community.

(E) New Homes within Community. For the replacement of a Home within the Community, only new Homes approved by the Board of Directors or the Architectural Committee, if any, may be brought into the Community. A Home shall be deemed “new” for this purposes if such Home has never been occupied or placed within a community for occupancy. For its use in the approval process, the Owner shall furnish said Board of Directors or Architectural Committee complete information on the Home, including model, year, make, color, condition and aesthetic features. In the event that the Home is conditionally approved, the Owner shall present to the Board of Directors or the Architectural Committee, if any, the plans for satisfying the conditions of the remodeling, repainting or other changes and shall agree to complete all the work reflected in the plans within three (3) months after placement of the Home. Such plans shall include the installation of exterior improvements, including skirting, awnings, carports, decks and stairs and all exterior landscaping.

All Homes must have complete sanitary facilities, including, without limitation, a toilet, wash basin, tub or shower and kitchen sink, and must be connected to all utility services in conformity with State and local health requirements. Each Home shall satisfy all front, side and rear set back requirements as required by Title 25 and/or the County. No portion of the Home or other improvements on the Unit shall extend or encroach onto any Common Area.

In the event the County or State fire safety rules or guidelines require the Home to have sprinklers, a new Home to be placed within the Community shall comply with such requirements. The Home must also conform to any other requirements as established in the Rules and Regulations.

(F) Fees. The Board of Directors or the Architectural and Landscaping Committee, if any, may establish a fee structure to be paid with applications for review, a deposit to secure against any damage to the Common Areas that might occur as a result of the implementation of the proposed plan, or any other fee or deposit which the Board of Directors or

the Architectural and Landscaping Committee, if any, in its sole discretion may deem necessary for the review of plans or protection of the Common Areas or to assure conformance with the conditions of approval on the plans.

(G) Responsibility for Permits. Owner is solely and absolutely responsible for submitting and obtaining any and all permits from any governmental agency with authority or jurisdiction over such Improvement (including the County and Housing and Community Development) prior to and as a condition of the Board of Director or Architectural Committee's final approval of the Improvement and commencement of any work. The Board of Directors and/or the Architectural Committee, if any, is not be responsible for the Owner obtaining any and all permits as may be required by the County. The Board of Directors and/or the Architectural Committee, if any shall not be responsible for the inspection or investigation of the Owner's property for suitability of building, landscaping, or other architectural plans.

(H) Variances. The Board and/or Committee shall be entitled to permit variances where required as a reasonable accommodation to the disabled without the necessity of following the established variance procedures. The Board and/or Committee is also entitled to allow reasonable variances with respect to the architectural requirements set forth herein or as may be promulgated from time to time, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

- (i) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners of Units located within 100 feet of the Property for which the variance applies. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30 day comment period has expired.
- (ii) The Committee must make a good faith determination that (a) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Community or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (b) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (b) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area, or Owner within the Community.

6.11. Power Equipment and Car Maintenance. The use of power equipment (excluding standard household equipment such as drills), operation of hobby shops, and/or performance of car maintenance shall only be permitted in the Community in accordance with the Rules and Regulations, as amended by the Board of Directors from time to time.

6.12. Homes per Unit. Not more than one (1) Home shall be placed on each Unit and only a Home as defined herein shall be the permitted dwelling structure placed on a Unit.

6.13. Limitation on Ownership Number of Units and Homes. To meet the requirements of *Government Code §66427.5*, no Member or Owner may own more than two (2) Units or Homes within the Community.

6.14. Maximum Occupancy. The permanent occupancy of each Unit shall be limited to two persons per bedroom, plus one person. For the purposes of this Section, “permanent occupancy” shall mean occupancy in excess of twenty (20) consecutive days by a person or thirty (30) days in any calendar year.

6.15. Drainage. The ground surface of any Unit or portion thereof in the Community shall not be modified without the prior consent of the Board of Directors. The Owner will be responsible for the drainage of the Unit and will improve his or her Unit so that no water collects on the Unit or under a Home as required by *Title 25 of the California Code of Regulations*. The Unit must not drain onto any other Units or to any Common Area except the street.

(A) Homes, including patio, additions or other extensions, shall have gutters with down spouts extending to the street area or approved drainage device to prevent pooling, erosion or flooding of other Units.

(B) The Owner of any Unit shall not in any way interfere with the established drainage pattern over his or her Unit from adjoining Units or any other Units and will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his or her Unit. For the purpose herein, “**established drainage**” is defined as the drainage in existence as of the date of recordation of this Declaration.

(C) The Association shall maintain all Common Area drainage facilities in proper order, including, but not limited to, keeping the Common Area free from debris and obstructions.

(D) All drainage of water from a Unit and the improvements thereon may drain or flow into adjacent streets, but shall not be allowed to drain or flow upon, across or under adjoining Units or the Common Area unless an easement for such purpose is granted.

6.16. Combined Sale Requirement. No Home shall be sold separately and apart from

the Condominium Unit the Home is located thereon, and vice versa, except if the Home is to be removed from the Community. This provision shall not prohibit a Condominium from being held in joint ownership, such as owning the property as community property or joint tenancy or as a trust, corporation, or unincorporated business entity, nor shall it prohibit the joint ownership of the property as community property or joint tenancy.

6.17. Improvements and Use of Common Area. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(A) Affording vehicular passage and pedestrian movement within the Community, including access to the Units;

(B) Beautification of the Common Area and providing privacy to the Owners in the Community through landscaping and such other means as the Board of Directors shall deem appropriate; and

(C) Parking of automotive passenger vehicles in areas provided therefore, as may be designated and approved by the Board of Directors upon such terms and conditions as may from time to time be determined by the Board of Directors.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes, except as incidental to permitted uses or for storage of maintenance equipment used exclusively to maintain the Common Area or parking of vehicles (except as otherwise provided for herein) nor in any manner which shall increase the rate of insurance for the Community or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

6.18. Minimum Age Requirement. Residency and ownership is based on age requirements for housing for older persons, in compliance with the provisions of the federal *Fair Housing Act*, as amended by *Public Law 104-76*, and implementing regulations, as may be amended from time to time. At least one resident who is an Owner must be fifty-five (55) years of age. You MUST refer to the Policies for Older Persons Housing Designation of the Association to determine all other requirements relating to minimum age requirements, as those Policies for Older Persons Housing Designation are amended from time to time. Occupancy in the Community is restricted to older persons at each home in that at least one resident occupant and Owner must be fifty-five (55) years or older. Other requirements relating to this occupancy requirement will be established from time to time in the Policies for Older Persons Housing Designation of the Community.

6.19. Exceptions to Restrictions. The Board of Directors shall have the right, but not the obligation to grant a waiver, forgiveness or release of the obligations and use restrictions set

forth in this Article VI in the Board of Directors' sole and absolute reasonable discretion. The exercise of such discretion shall be documented through a written resolution retained by the Owner for whom the waiver, forgiveness or release is so provided and the Association. A waiver, forgiveness or release granted by the Board of Directors shall not require the Board of Directors to grant the same to any other Owner nor shall it be deemed a waiver of its rights to enforce any of the restrictions or obligations set forth herein.

ARTICLE VII MAINTENANCE AND REPAIR RESPONSIBILITIES

7.1 Association's Maintenance Responsibilities. The Association shall be solely responsible for all maintenance, repair, upkeep, and replacement of the Common Areas and all facilities, improvements, buildings, furnishings, equipment and landscaping thereon, and all existing or future easements for road or other purposes, including easements outside the boundaries of the Community for fire protection or other purposes, and other property that is owned by the Association. Maintenance shall include (without limitation): painting, maintaining, cleaning, repairing, and replacing of all Common Areas, including on-site streets and street lighting, extra parking in the Common Areas, recreation areas, clubhouse, laundry and storage areas, easements, walkways, and drainage ways, parking areas and recreational facilities. The Association, through its Board, shall have the obligation to maintain, manage, operate, control, repair, replace and restore the necessary improvements on or upon the Common Area pursuant to the provisions of the Governing Documents and the provisions of any document transferring any easement or obligation to the Association. The Association shall manage and maintain or cause to be maintained all of the Common Area in a state of high quality so as to keep the whole Community in a first-class condition and in a good state of repair.

7.2 Utilities Repair and Responsibilities. Except as provided below, the Association has the financial responsibility for inspection, maintenance, repair and/or replacement of all components of the utilities systems up to the outlet side of the electricity pedestal breaker, and the water system's ball valve.

(A) San Diego Gas & Electric Co. (SDG&E) owns all the gas supply lines in the Community, except that SDG&E's jurisdiction for the gas system ends at the outlet side of the meter installed at each Unit. The Owner is responsible for maintenance, repair, and replacement of equipment within and from the Unit up to this connection at the meter and for ensuring proper connection to the meter at all times.

(B) The Association owns, maintains and is responsible for all the underground cable, including the pedestal, meter, and pedestal breaker. The Unit owner is responsible for maintenance, repair, and replacement of electrical equipment that provides electricity within and from the Unit to the breaker and for ensuring proper connection to the meter at all times. Owner shall be solely responsible for ensuring the electrical load of the Home and other improvements

within the Unit do not overload the pedestal.

(C) The Association owns all underground lines up to and including the ball, or gate, valve shut off. The Owner is responsible for maintenance, repair, and replacement of any equipment that provides water within and from the Unit to this valve and for ensuring proper connection to the meter at all times.

(D) The water provider is responsible for maintenance, repair, and replacement of all sewer lines from the exit point at the Home. The Owner is responsible for maintenance, repair, and replacement of the sewer system within the Unit and for ensuring proper connection to the meter at all times.

(E) The Home, all accessory structures and ancillary improvements on a Unit shall not exceed 100 AMP electrical load provided to each Unit.

7.3 Owner Maintenance Responsibility and Standards. In addition to other standards and responsibilities set forth herein (including in Section 7.2 above), Owners shall have the following maintenance responsibilities:

(A) Owners shall maintain, at their sole expense, the Units, including the Home located thereon, landscaping and all improvements, in compliance with all applicable laws, regulations, administrative orders and citations and in a safe, clean, attractive and well-kept condition and shall also maintain all utility lines from the utility pad connection to the Home.

(B) Driveways within a Unit shall be maintained by the Owner in a first-class condition at Owner's sole cost and expense. No new construction, nor any major repair of existing pavement, will be permitted without (i) prior approval of the Board of Directors or the Architectural Committee (as applicable), and (ii) covered drainage being installed.

(C) No trash, garbage or other waste, including, but not limited to, inoperable and/or unlicensed vehicles, may be kept permanently on a Unit. No combustible materials may be accumulated in, around or on the Unit, or any structure located thereon.

(D) The Association owns, maintains, repairs, and replaces the pumps and irrigation lines that provide irrigating water needs for the Common Area and at the top of the steep banks above the Units in the Community. Owner is solely responsible for all irrigation systems located wholly within a Unit and servicing the Unit's landscape.

7.4 Modification of Standards and Recovery of Costs. The Association reserves the right to modify the standards for maintenance and conditions of improvements located on a Unit from time to time. The Association shall have the right to require an Owner to bring the Home and/or Unit into compliance with the provisions of the Governing Documents and all applicable

laws and regulations. In the event any Unit, including landscaping or improvements thereon, is not maintained and kept clean in such a manner, the Association shall have the right, either itself or through any other person, to furnish the labor and/or materials necessary to bring said Unit, including landscaping and/or improvements thereon, up to a standard which meets the approval of the Association in its sole discretion and to maintain them according to such standard. In such event, the Owner of any such Unit shall pay to the Association an amount equal to all direct and indirect costs and expenses incurred by the Association to furnish such labor and/or materials or have the same furnished. The amount that the Owner of any such Unit is obligated to pay hereunder shall constitute an Assessment Lien on any such Unit and shall be payable within thirty (30) calendar days after the charge is made.

Any such charge which is not paid within thirty (30) calendar days after the charge is made shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association shall be entitled, but not required, to enforce its rights hereunder by following the procedure provided for in the Policies and Procedures. This paragraph shall constitute a request by each Owner, under the conditions stated herein, for the Association to furnish any labor and/or materials which are furnished hereunder. Any claim against the Association shall not constitute a defense or offset in any action of the Association for nonpayment of any amounts which may be assessed hereunder.

7.5 Liability of Owners for Damage to Common Area. The Owner of each Condominium shall be liable to the Association for all damage to the Common Area or improvements thereon caused by such Owner or any occupant of his or her Unit or Guest or by any pet(s). Liability of an Owner shall be established only after notice to the Owner and a hearing before the Board of Directors. In the event an Owner disagrees with the decision of the Board of Directors on the question of liability, the Owner may petition a court of law or submit the matter to arbitration under the rules of the American Arbitration Association. Notwithstanding and in addition to the foregoing, the Board of Directors and the Architectural and Landscaping Committee, if any, have the right to request fees and deposits as set forth in Section 6.10(D) above

ARTICLE VIII GENERAL PROVISIONS

8.1. Right of Entry for Emergency Repair. The Association shall have the authority to designate one (1) or more qualified repairmen or other persons to enter upon and within any individual Unit and/or Home, in the presence of the Owner thereof or with the written consent of the Owner thereof, or otherwise, for the purpose of making emergency repairs therein, or for necessary maintenance or repair to portions of the Common Area, or to abate any nuisance being conducted or maintained in said Unit, in order to protect the property rights and best interests of the remaining Owners. The Association or its management company, if any, shall have the right to enter upon the Unit (excluding the Home) to perform maintenance of utilities, trees and driveways, or for maintenance of the Unit when the Owner fails to so maintain the premises. The Association shall

have the right to enter a Home without the prior written consent of the Owner in case of an emergency or when the Owner of such Home has abandoned the Home. Except in the event of an emergency, the Association shall provide reasonable notice to the Owner of such entry and shall not enter in a manner or at a time that would interfere with the Owner's quiet enjoyment of the Unit or Home. What constitutes "reasonable notice" for purposes of this Section 7.1 only shall be determined by the Board, in its sole and absolute discretion, based upon the totality of the circumstances which warrant an entry. In the event of an emergency, no notice shall be required unless such notice can promptly and reasonably be provided to the Owner. The Association shall have a general right of access easement to access all Common Areas including, but not limited to, Exclusive Use Areas in order to maintain and repair the Common Area.

8.2. Association's Insurance Requirements. Notwithstanding anything to the contrary in the Bylaws, the Association shall maintain any insurance coverage required by law, such as worker's compensation insurance in addition to the insurance policies set forth in the Bylaws (see Section 5.8 thereof) and such policies specifically set forth herein. Each insurance policy maintained by the Association shall (i) include each Unit Owner and each Unit Owner's First Mortgagee, if any, as beneficiaries of such policy, with certificates of insurance issued upon request, and (ii) include that such policy cannot be cancelled without at least ten (10) days prior written notice to the Association and each holder of First Mortgage listed in such policy:

(A) The Association shall maintain a master or blanket type policy of property insurance covering all of the Common Areas, including Exclusive Use Areas, fixtures and personal property owned by the Association (but excluding land, foundation, excavation and other items normally excluded from coverage referred to herein as the "excludable items"), in an amount equal to one hundred percent (100%) of the current replacement cost of the Community (excluding the excludable items). Such policy shall include the "Special Condominium Endorsement" or its equivalent and shall name each Unit Owner and Mortgagor as additional beneficiaries of the policy.

(B) The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Areas, including Exclusive Use Areas, within the Community in an amount of at least \$3,000,000 for bodily injury, including death, and property damage arising out of a single occurrence. Such policy shall include coverage for property damage, bodily injury and death of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

(C) It shall be within the discretion of the Board of Directors to obtain and maintain blanket fidelity bonds covering all officers, directors, and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. If the Board of Directors chooses to obtain fidelity bonds, such fidelity bond coverage shall name the Association as an obligee for any person or entity handling funds of the Association, including, but not limited to officers, directors, trustees, employees and agents of the Association and

employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4th) of the annual Regular Assessments on all Units in the Community, plus reserve funds.

(D) The Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, so long as any of which is a Mortgagee or Owner of a Residential Unit within the Community, except to the extent such coverage is not available or has been waived in writing by one or all of such lenders, as is applicable.

(E) The Board of Directors may purchase such other insurance, as necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and workers' compensation and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

(F) All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers: (i) subrogation of claims against Owners and tenants of Owners; (ii) any defense based upon coinsurance; (iii) any right of setoff, counterclaim apportionment, proration, contribution by reason of other insurance not carried by the Association; (iv) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect or omission of any named insured or the respective agents, contractors and employees of any insured; (v) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; (vi) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium; (vii) any right to require any assignment of any Mortgage to the insurer; (viii) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and (ix) prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

8.3. Owner's Insurance Requirements. It is the responsibility of each Owner to provide insurance on all portions of the Condominium not owned in common, specifically including the Home and other improvements located on the Unit. Nothing herein shall preclude any Owner from carrying any public liability insurance as the Owner deems desirable to cover the Owner's individual liability for damage to persons or property occurring inside the Owner's Unit

or elsewhere upon the Community. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are applied.

8.4. No Racial or Other Restrictions. No Owner shall execute or file any instrument of record which imposes a restriction upon the sale, lease or occupancy of his or her Condominium on the basis of race, sex, color, religion, creed, marital status, sexual orientation, national origin, ancestry, familial status, source of income or conditions of physical or mental disability.

8.5. Enforcement of Declaration and Bylaws. The collective Owners or any one (1) of them or any member of the Board of Directors or the Board of Directors acting on behalf of the Owners, shall be entitled to bring legal action for damages against any Owner who shall default in the performance of any of the provisions of the Governing Documents, including, but not limited to, the covenant to pay Assessments. Further, the enforcement of the Governing Documents shall be in accordance with *California Code of Regulations Section 2792.26(a)* and be further governed by the Association's Policies and Procedures.

8.6. Liberal Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Community for the mutual benefit of all Owners.

8.7. Severability of Provisions. The provisions herein shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions hereof shall not affect the validity of the remaining provisions.

8.8. Cumulative Remedies. Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative, whether so expressly provided for or not.

8.9. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the heirs, legatees, executors, devisees, administrators, guardians, conservators, successors, purchasers, lessees, sublessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns of and from the parties hereto.

8.10. Waiver or Breach of Declaration. No waiver or any breach of any of the covenants or conditions of this Declaration shall constitute a waiver of any succeeding or preceding breach of the same, or any other covenant or condition herein contained.

8.11. Delivery of Notices and Documents. Any written notice or other documents relating to the requirements of this Declaration may be delivered personally or by mail. If by mail, such notice, unless expressly provided for herein or in the Bylaws to the contrary as to the type of

notice being given, shall be deemed to have been delivered and received forty-eight (48) hours after a copy thereof has been deposited in the United States mail, postage prepaid, addressed as follows:

(A) If to an Owner to the address of any Unit in the Community owned by him or her in whole or in part or to the address last furnished to the Association by such Owner for the purpose of giving notice and delivering documents. Each Owner shall file in writing with the Association, promptly upon becoming an Owner, his or her address for the purpose of giving notice and delivering documents and shall promptly notify the Association in writing of any subsequent change of address.

(B) Notices to the Board of Directors shall be addressed to the Board of Directors, and the Board of Directors shall cause the address of the Board of Directors to be posted at all times in a conspicuous place. In addition, notice of the address of the Board of Directors of the Association shall be given by the Board of Directors to each Owner within a reasonable time after the Board of Directors has received actual notice of such Owner's purchase of a Unit.

8.12. Notification of Sale of Unit. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferees shall notify the Board of Directors, in writing, of such sale. Such notification shall set forth: (a) the name of the transferee and his transferor; (b) the street address or Condominium number of the Condominium purchased by the transferee; (c) the transferee's mailing address; and (d) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by the Board of Directors or the Architectural And Landscaping Committee if any, or any agent or representative thereof, shall be deemed duly made and given to the transferee, if duly and timely made and given to said transferee's transferor.

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

8.14. Encroachment Easement. Each Unit within the Community is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, reconstruction, repair, settlement, shifting, or movement of the building or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners. In the event an encroaching structure is partially or totally destroyed and then repaired or rebuilt, the Owners of each Unit agree that a minor encroachment over adjoining Units or Common Area shall be permitted and that there shall

be valid easements for the maintenance of said encroachment as long as they shall exist.

8.15. California Code References and Governing Document Conflicts. Any and all references to California statutory law shall include the referenced section, any amendments thereto, restatements, replacements or renumbering. In the event there are any conflicts between this Declaration, the Bylaws, Rules and Regulations, or implementing regulations and the California statutory law, the statutory law shall conclusively control. In the event of any conflicts among the Governing Documents, the Governing Documents shall control in the following order: Declaration, Articles of Incorporation, Bylaws, and Election Policy; with the Rules and Regulations, Policies and Procedures, Delinquent Assessment Collection Policy, and Architectural Guidelines carrying equal weight and priority thereafter.

8.16. Non-Liability of Association for Water Damage. The Association shall not be liable to any Owner, Tenant, Resident, Guest, First Lender or other lien holder on a Unit, for any claim, damages, liabilities, costs, or expenses (collectively a “**Claim**”) of such party which result or arise from (i) water or water borne material that backs up through sewers, drains, pipes or that overflows or is discharged from a sump, sump pump or related equipment, (ii) water or water-borne materials below the surface of the ground, including water that exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, or other structure, and (iii) water or sewer which may otherwise leak flow from any pipe, drains, conduits, appliances or equipment located on the Unit or any other Unit within the Community; regardless whether such is caused by human or animal forces or any act of nature; unless such is caused by the gross negligence of the Association, its Board, managers or employees. Owners shall be solely responsible for any Claim arising or related to such items outlined in subparagraphs (i) through (iii) inclusive above.

ARTICLE IX **UTILITIES**

9.1 Owners’ Rights and Duties. The rights and duties of the Owners with respect to sanitary sewer, trash service, drainage, electric, gas, fire hydrants, television receiving, telephone equipment, cables and lines, exhaust flues and heating and air conditioning facilities (hereinafter referred to collectively as “**Utility Facilities**”) shall be as follows:

(A) Whenever Utility Facilities are installed, repaired or maintained in the Community, which Utility Facilities or any portion thereof lie in or upon a Unit owned by other than the Owner of a Unit served by said Utility Facilities, the Owners of any Unit served by said Utility Facilities shall have the right of reasonable access for themselves, for utility companies, or for the Association to repair, replace, and generally maintain said Utility Facilities as and when necessary.

(B) Whenever Utility Facilities are installed, repaired or maintained in the Community which Utility Facilities serve more than one (1) Unit, the Owner of each Unit served by said Utility Facilities shall be entitled to the full use and enjoyment of such portions of said

Utility Facilities as service his or her Unit.

(C) In the event of a dispute between Owners with respect to the repair or rebuilding of said Utility Facilities or with respect to the sharing of the cost thereof, then, upon written request of one (1) such Owner addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

9.2 Easements for Utilities and Maintenance. Easements over and under the Community for the installation, repair, and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as may be shown on the Map of the Community and as may be hereafter required or needed to service the Community, are hereby reserved by the Association and its successors and assigns until the sale of the first unit. The Association shall have the right to grant and transfer the same. Said easements shall be in favor of the Association and its successors and assigns for the benefit of the Community and for the benefit of the Association with respect to all recreational and Common Area(s) transferred to the Association.

9.3 Association's Duties. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Community except those metered or charged separately to the Units. Each Owner shall maintain the heating and air-conditioning system (if any) servicing his or her respective Units, and Homes situated thereon, and all light fixtures and appliances therein.

9.4 Conversion of Utilities. The Association shall have the ability to convert, transfer or otherwise dispose of the utilities of the Association and/or Community under the California Public Utilities Code to another entity, whether public or private.

ARTICLE X

DESTRUCTION OF IMPROVEMENTS

10.1. Reconstruction with Election of Owners. In the event of total or partial destruction of the improvements in the Community (excluding the Homes) wherein the cost of reconstruction exceeds the insurance proceeds available by One Hundred Fifty Thousand Dollars (\$150,000.00), unless and until such amount is contrary to state or federal laws, a special meeting shall be called for the purpose of having the Members vote on whether or not to repair the damage. Said meeting shall be called within forty-five (45) calendar days of said destruction. If reconstruction is to take place, as approved by a majority of the Owners, the Board of Directors shall be required to execute, acknowledge, file and record not later than one hundred twenty (120) calendar days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

10.2. Reconstruction Assessments. If a majority of the Owners determine to rebuild, and/or the cost of reconstruction exceeds the insurance proceeds available as set forth in Section 9.1 hereof, then each Owner shall be obligated to contribute such funds as shall be necessary to pay his or her proportionate share of the costs of reconstruction over and above the insurance proceeds, and the proportionate share to be paid by each Owner shall be levied upon the basis of each Owner's interest in the Common Area. In the event of failure or refusal by any Owner to pay his or her proportionate share of the costs after notice to him or her and should failure or refusal continue for a period of sixty (60) calendar days, the Board of Directors may levy an Individual Special Assessment against such Owner which may be enforced under the lien provisions contained in the Declaration. In the event of partial destruction of the improvements in the Community wherein the costs does not exceed the insurance proceeds available, the insurance proceeds made available to the Association shall be used solely to rebuild or repair the improvements in accordance with Section 9.3.

10.3. Obligation of Board of Directors. If a majority of the Owners determine to rebuild, the Board of Directors shall obtain bids from at least three (3) reputable contractors and shall award the construction work to the contractor determined by the Board of Directors, in its sole discretion, to be most suitable. The Board of Directors shall have authority to enter into a written contract with said contractor for such reconstruction work, and the insurance proceeds held by the Board of Directors shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board of Directors to take all steps necessary to ensure the commencement and completion of such reconstruction at the earliest possible time.

10.4. Determination Not to Rebuild. If the vote of a majority of the Owners determines not to rebuild, then:

(A) **Distribution of Insurance Proceeds.** Subject to the rights of Mortgagees, any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual lenders by the Board of Directors according to a pro rata distribution among all owners; i.e., one/two hundred thirty two (1/232nd) common area ownership interest attached to each Condominium Interest. Notwithstanding the foregoing, before any pro rata distribution shall occur, any demolition and/or clean-up that is required by any local, state or federal governmental agency shall be paid first.

(B) **Recordation of Certificate Not to Rebuild.** The Board of Directors shall have the duty within one hundred twenty (120) calendar days of the date of such loss to execute, acknowledge, and record a certificate setting forth the determination of the Owners not to rebuild and shall promptly cause to be prepared and filed such revised Maps and other documents as may be necessary to show the conversion of the Community to the status of unimproved land or to show the elimination of one (1) or more Units as a result of such destruction.

10.5. Revival of Right to Partition Condominium. Upon recordation of a certificate to not rebuild as described in Section 9.4(B), the right of any Owner to partition his or her

Condominium through legal action shall forthwith revive.

10.6. Condemnation. In the event an action for condemnation of the entire Community, or a portion thereof, is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply: (a) upon the unanimous consent of the Owners (one vote per Unit), the Community or portion thereof may be sold to such governmental body prior to judgment; and (b) the proceeds of such condemnation or sale shall be distributed to the Owners according to their proportionate interest in the Community, or portion thereof, which was the subject of the government action. The Association shall represent the Owners in any potential condemnation proceeding or in negotiations, settlements or agreements with the condemning authority for the acquisition of the Common Area or parts thereof, and the Owners hereby appoint the Association as attorney-in-fact for such purpose. In the event of condemnation, the award or proceeds of settlement shall be payable to the Association, to be held in trust for the Owners and their First Mortgage Lender.

ARTICLE XI **SUSPENSION OF THE RIGHT OF PARTITION**

11.1 Partition may be Permitted. The right of partition of the Common Area is hereby suspended pursuant to the Davis-Stirling Act. The Community may be partitioned and sold as a whole, pursuant to the provisions of the Davis-Stirling Act as presently enacted or subsequently amended upon a showing of the occurrence of any one (1) of the events therein provided. Additionally, partition may be had of the Community upon the showing that the conditions for such partition by sale set forth in Article XI have been met. Nothing herein contained shall prevent the partition or division of interest between joint or common Owners of one (1) Unit.

ARTICLE XII **PROHIBITIONS AGAINST SEVERABILITY OF COMPONENT INTERESTS IN CONDOMINIUM**

12.1 Prohibition of Severance. No Owner shall be entitled to sever his Unit from his undivided interest in the Common Area for any purpose. Neither of said component interests may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void and of no effect. The purpose of this Section 12.1 is intended to restrict severability in accordance with the provisions of the Davis-Stirling Act.

12.2 Conveyance of Entire Condominium. Any conveyance of a Unit or the component interests in the Common Area by any Owner shall be presumed to convey the entire Condominium. No Unit or the component interests in the Common Area may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void and of no effect. It is hereby the intent to restrict severability in accordance with the provisions of the Davis-Stirling Act.

ARTICLE XIII
TERM OF DECLARATION - COMPLIANCE WITH RULE AGAINST
PERPETUITIES AND RESTRAINTS OF ALIENATION

13.1 Term of Declaration. The covenants contained herein shall run with the land and shall be binding upon all parties and all persons claiming under them for twenty-one (21) years from the date of recordation of this Declaration, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by not less than a majority of Owners of the Units shall be recorded canceling or terminating this Declaration.

ARTICLE XIII
PROTECTION OF LENDERS

14.1 Written Notification to First Lenders. A First Lender, upon written notice to the Association, is entitled to timely written notice from the Board of Directors of the following actions: (i) any proposed amendment to the Governing Documents effecting a change in the boundaries of any Unit or the Exclusive Use Areas, the interest pertaining to a Unit, the liability for Common Area Expenses, the number of votes in the Association pertaining to a Unit or the purposes to which any Unit or the Common Area are restricted; (ii) any proposed termination of the condominium regime; (iii) any condemnation loss or any casualty loss which affects a material portion of the Community or a Unit to which there is a Mortgage held by an Eligible Mortgage Holder; (iv) any delinquency in the payment of Assessments or charge owed by an Owner of a Unit subject to a First Mortgage where such delinquency has continued for a period of at least 60 days; (v) any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to Section 7.2 herein; and (vi) any proposed action that requires the consent of a specified percentage of First Lenders.

14.2 Exemption from Right of First Refusal. Any First Lender which comes into possession of the Unit pursuant to the remedies provided in the mortgage or judicial foreclosure of the mortgage shall be exempt from any right of first refusal, if such right exists in the Governing Documents, and the First Lender's right to sell or lease the Condominium shall not be impaired by any right of first refusal.

14.3 Subordination of Assessment Lien to Mortgages. Any lien created or claimed under the provisions of this Declaration are expressly made subject to and subordinate to the rights of the First Lender of any First Mortgage made in good faith and for value upon the entire Community or upon any Unit therein, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the First Lender thereof shall expressly subordinate the First Lender's interest in writing to such lien.

14.4 Transfer of Unit by Foreclosure. Any holder of a First Mortgage who comes into possession of a Unit pursuant to the remedies provided in the Mortgage or foreclosure of the

Mortgage shall not be liable for more than six (6) months of the unpaid Assessments or charges against the Mortgaged Unit which accrued prior to the time such holder comes into possession of the Unit. The Assessment Lien including, but not limited to, interest, late charges, costs and attorney's fees provided for herein shall be subordinate to the lien of any First Lender or First Mortgage now or hereafter placed on the Unit; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such Unit from liability for any Assessments thereafter becoming due nor from the Assessment Lien of any such subsequent Assessment.

14.5 Examination of Books and Records. The holders of First Mortgages shall have the right to examine the books and records of the Association. Upon written request by holders of First Mortgages, the Association shall prepare and furnish within a reasonable period of time audited financial statements for the immediately preceding fiscal year.

14.6 Reserves for Replacement. An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by Regular Monthly Assessments rather than by Special Assessments.

14.7 No Priority Over Rights of First Mortgages. No provision herein shall give an Owner or any other party priority over any rights of First Lenders of Units, pursuant to their Mortgage in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or the Common Area.

14.8 Conflict. If there is any conflict between any provisions of this Article and any other provisions in the Governing Documents, including, but not limited to this Declaration or the Bylaws of the Association, the language contained in this Article, "Protection of Lenders", shall control.

ARTICLE XV BREACH

15.1 Right of Entry. Violations of any of the provisions, conditions, restrictions, covenants, easements or reservations contained herein shall give to the Association the right to enter upon the Unit upon or as to which such violation exists and to abate, remove or repair such violating item(s) at the expense of the Owner. Such entry shall be made only after three (3) calendar days' notice to said Owner. The Association or their respective representatives or successors shall not thereby be deemed guilty by any Owner of trespass by such entry, abatement or removal.

15.2 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitutes a nuisance, either public or private. The Association or their

respective representatives or successors shall have the power to enforce the terms of this Declaration as permitted under applicable law in order to remedy such nuisance. Such remedy shall be deemed cumulative and not exclusive.

15.3 Right of Lien Holder. A breach of any of the provisions, conditions, restrictions, covenants, easements or reservations herein contained shall not affect or impair the lien or charge of any bona fide First Lender or First Mortgage, made in good faith and for value, on any of the Units. However, the Owner or a subsequent Owner of the Unit shall be bound by these provisions, conditions, restrictions, covenants, easements and reservations, whether such Owner's title was acquired by foreclosure, trustee's sale or otherwise.

15.4 Enforcement. In the event of a breach of any of the provisions, conditions, restrictions, easements, covenants or restrictions hereby established which is continued for thirty (30) calendar days, the Association or its agents or assigns, any Owner and his or her agent or assigns and rights of enforcement as specifically set forth on behalf of lien holder and the County, may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach are inadequate. The restrictions provided for hereunder bind all Owners.

ARTICLE XVI **AMENDMENT**

16.1 Amendment by Members. Each and all of the covenants, conditions and restrictions contained herein may be modified, amended, augmented or deleted by an affirmative vote (in person or by written ballot) of the Members representing fifty-one percent (51%) of the voting power of the Association, and such prior approval of the holders of Eligible Mortgage Holders as may be required by Section 13.4 which may then be of record as valid encumbrances against said Community or any part or portion thereof, Said amended Declaration or amendment of Declaration shall not be effective for any purpose unless and until recorded in the office of the County Recorder, but shall thereafter be conclusive and presumed to be valid as to anyone relying thereon in good faith. The written approval endorsed on any such amendment and acknowledged by a notary, shall be sufficient compliance with the provisions of this Section. Notwithstanding anything to the contrary contained in this Declaration, any amendment to the Condominium Plan shall satisfy the requirements of *California Civil Code 4295*.

16.2 Prior Approval of Eligible Mortgage Holders. Upon the sale of the first Unit to an individual Owner, the approval of First Mortgage Holders on fifty-one (51%) of the Units subject to a First Mortgage shall be required **(i)** to amend any portion that is of a material adverse nature to First Mortgage Holders; **(ii)** to materially amend any provisions of this Declaration or the Bylaws or to add any material provisions thereto which establish, provide for, govern or regulate any of the following: (1) voting of the Membership; (2) Assessments, assessment liens or subordination of such liens; (3) reserves for maintenance, repair and replacement of the common elements; (4) insurance or fidelity bonds (if any); (5) rights to use the Common Areas (provided,

however, this does not limit the Association's ability to impose reasonable Rules and Regulations relating to the use of the Common Areas); (6) responsibility for maintenance and repair of the portions of the Units and Exclusive Use Areas; (7) expansion or contraction of the condominium regime or the addition, annexation or withdrawal of property to or from the regime; (8) boundaries of any Unit; (9) the interest in general; (10) convertibility of Units into Common Area or of Common Area (including Exclusive Use Area) into Units; (11) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Unit in the Community; or (12) establishment of self-management by the Association where professional management has been required by any of the agencies or corporations with an interest in the Community; (iii) to modify any portion of Article XIII; (iv) any action to terminate the legal status of the Community after substantial destruction or condemnation occurs; or (v) to use insurance proceeds for any purpose other than to rebuild. Implied approval may be assumed when a First Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty (60) days after the First Mortgage Holder actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

ARTICLE XVII EFFECTIVENESS OF CREATION OF CONDOMINIUM

17.1 Effectiveness of Creation of Condominium. The creation of Condominiums on the Community shall become effective upon the first conveyance of a deed by Association of a Unit, as provided herein and thereafter, and until conveyance of all Condominiums included in this Community, it is understood that Association shall for all purposes, be the Owner of the remaining Condominiums until conveyed by Association and shall have all rights and benefits of the Owners of such Condominiums until conveyed by Association some other Person.

ARTICLE XVIII BINDING EFFECT OF COVENANTS, CONDITIONS, AND RESTRICTIONS

18.1 Binding Effect of Conditions, Covenants and Restrictions. Each Owner, and any successor-in-interest to said Owner, takes his or her right, title, interest, and estate subject to all covenants, conditions, and restrictions set forth herein, and agrees to perform and to be bound thereby. The covenants and restrictions imposed hereby constitute a general plan for the benefit of each Owner in the Community. Said covenants, conditions and restrictions may be enforced by the Association, the Board of Directors or by any Owner or any combination of Owners. Said covenants, conditions and restrictions shall be a burden on, and a benefit to, not only each of the original purchasers of Units, but also their grantees and all subsequent Owners thereof. All covenants, conditions and restrictions herein are intended to and shall constitute covenants running with the land or equitable servitudes on the land, as the case may be, and are intended to, and shall be binding on, any future Owners.

IN WITNESS WHEREOF, the undersigned Association has executed this Declaration the day and year first written hereinabove.

Rancho Monserate Country Club Owners Association, Inc.
a California nonprofit mutual benefit corporation

By: Carol Kelley
Name: Carol Kelley
Its: President

NOTARY ACKNOWLEDGEMENT

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

STATE OF California)

COUNTY OF San Diego)

On June 22, 2017, before me, Bridgette Conboy, Notary Public, personally appeared Carol Kelley

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

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

WITNESS my hand and official seal.

Bridgette Conboy
Signature

(Seal)

