

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION

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For Recorder's Use

FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION
A Residential Senior Condominium Development.

*Lots 1 through 8 of Tract No. 4471, Map No. 11262
County of San Diego*

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**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION**

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the day and year hereinafter written, by CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Declarant") with reference to the following Recitals.

RECITALS

A. Declarant is a corporation whose Members are the Owners of all the Condominium Units within that certain real property in the County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "Property").

B. The Property was developed as a Condominium Project, as defined in Section 1351(f) of the California Civil Code, and consists of six (6) Residential Condominium buildings, consisting of one hundred thirty-seven (137) Condominium Units and related Common Areas including, without limitation, a Community Center, Care Facility Condominium, pool and spa. The development and sale of the Condominium Units occurred in six (6) phases, as follows: Phase 1 consisted of thirty-six (36) Condominium Units, Phase 2 consisted of twelve (12) Condominium Units, Phase 3 consisted of thirty-six (36) Condominium Units, Phase 4 consisted of thirty-six (36) Condominium Units, Phase 5 consisted of five (5) Condominium Units, and Phase 6 consisted of twelve (12) Condominium Units plus one (1) Care Facility Condominium. Each phase of development of the Property is subject to a separate Condominium Plan, as that term is hereinafter defined.

C. The Owners of each Condominium Unit have an undivided fractional interest in and to the Common Area of the phase in which such Owner's Condominium is located, a separate interest in a Condominium Unit, the right to the exclusive use of any Exclusive Use Common Area appurtenant to such Owners' Unit, an appurtenant membership in the Association, and a nonexclusive easement over the Common Areas of the other phases, subject to any exclusive easements and other separate ownership interests therein, and this Restated Declaration.

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

1. The Declaration of Restrictions recorded August 13, 1985 as Instrument No. 85-290873.
2. The First Declaration of Annexation to CC&Rs recorded September 13, 1985 as Instrument No. 85-337853.
3. The Second Declaration of Annexation to CC&Rs recorded January 17, 1986 as Instrument No. 86-022727.
4. The Amendment to CC&Rs recorded February 21, 1986 as Instrument No. 86-069589.

5. The Third Declaration of Annexation to CC&Rs recorded February 25, 1987 as Instrument No. 87-103240.
6. The Fourth Declaration of Annexation to CC&Rs recorded October 7, 1987 as Instrument No. 87-566255.
7. The Fifth Declaration of Annexation to CC&Rs recorded February 1, 1988 as Instrument No. 88-046040.
8. The Amendment of CC&Rs recorded December 6, 1990 as Instrument No. 1990-0650182.

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

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

F. The Declaration, in Section 4 of Article IX, provides that it may be amended by the affirmative vote or written consent of fifty-one percent (51%) of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

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

DECLARATION

ARTICLE 1 DEFINITIONS

1.1 "*Age Restrictions*" means those restrictions as defined in Section 5.2 herein.

1.2 "*Approved Occupant*" means any occupant of a Condominium other than an Owner who is authorized to incur Personal Charges and who has been approved by the Board as provided in Section 3.7 hereof.

1.3 "**Articles**" means the Articles of Incorporation of Chateau Lake San Marcos Homeowners Association, filed in the office of the Secretary of State of the State of California on July 22, 1985 as File No. 1281139, and any amendments thereto now existing or hereafter adopted.

1.4 "**Assessment**" means any charge assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article 4 of this Restated Declaration, including Regular, Special, Reimbursement, Utility, Personal Charge, Monetary Penalty, Individual and Additional Occupant Assessments, all as more particularly described in Article 4.

1.5 "**Association**" and "**Declarant**" means Chateau Lake San Marcos Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

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

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

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

1.9 "**Common Area**" means all portions of the Property not located within a Unit.

1.10 "**Common Area Lots**" means Lot 4 and Lot 8 of County of San Diego Tract No. 4471, according to Map thereof No. 11262, as recorded in the Official Records of San Diego County, California on June 20, 1985. While the Common Area Lots shall be deemed to be part of the Common Area, no Owner shall be deemed to own an undivided interest in such Common Area Lots; rather, the Common Area Lots are vested in the Association.

1.11 "**Common Expenses**" means the actual and estimated expenses of operating the Project and any reasonable reserve for such purpose (exclusive of Personal Charges), as found and determined by the Board, and all sums designated common expenses by or pursuant to the Condominium Documents.

1.12 "**Condominium**" means an estate in real property consisting of a separate interest in a Living Unit, the boundaries of which are shown and described on the Condominium Plan for the particular lot, Building and Phase as more particularly described in Exhibit "C" attached hereto and made a part hereof, a fractional undivided interest as a tenant-in-common in the Common Area of the respective phase of the Project, a nonexclusive easement over the Common Area of the other phases of the Project, a Membership in the Association, and any Exclusive Use Common Area appurtenant to each Unit as shown on the Condominium Plan or deed of conveyance. The term "Condominium," as used herein shall not mean and refer to the Residential Care Facility Condominium.

1.13 "**Condominium Plan**" means those certain condominium plans as more particularly described in Exhibit "C" attached hereto and made a part hereof. Condominium Plan shall include any amendments to these documents.

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

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

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

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

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

1.18 "**Living Unit**" means those elements of a Condominium which are not owned in common with the Owners of other Condominiums in the Project.

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

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

1.21 "**Owner**" means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Unit, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee. Whenever "Owner" is used in this Declaration for the purposes of determining quorums, percentages, or minimum or maximum numbers for voting, as specified in this Declaration, all the Owners of a particular Condominium shall be counted as one (1).

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

1.23 **"Personal Charge"** means any individual, personal expense incurred by an owner or an Approved Occupant incident to the utilization of any Common Area facilities or services, or the Care Facility, which may be levied by the Association against an Owner and his or her Unit in accordance with Section 4 herein. Examples of Personal Charges shall include, by way of illustration and without limitation, per diem charges established for the use of, or services received in the Care Facility, the established costs for any personal and specialized services provided to the Condominium, an Owner or Approved Occupant, any non-budgeted meal charges (whether in or outside the Restaurant) and any special transportation or supervision charges, all in amounts as may be determined by the Board and modified from time to time. The amount of such charges shall be set forth in an ancillary service schedule attached to the Chateau Lake San Marcos Resident Handbook.

1.24 **"Phase Lot"** means, for example, the Phase 1 Lot, the Phase 2 Lot and/or the Phase 3 Lot, etc. as shown and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference.

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

1.26 **"Property"** means the real property described in Exhibit "A" attached hereto.

1.27 **"Residential Care Facility" or "Care Facility"** refers to that condominium described as Unit D-105 "Skilled Nursing Care Facility" on the Condominium Plan composed of: (i) the space bounded by and contained within the interior unfinished surfaces of the walls, floors, ceilings, windows and doors of the same, as identified in the Condominium Plan recorded for Lot 6; and, (ii) an undivided 1/13th interest in the Common Area of Lot 6. The foregoing shall include both the portions of the building so described and air-space so encompassed. Said condominium vests in the Association and as such has no voting rights or obligation to pay Assessments. The Care Facility may be operated as a personal care facility, skilled nursing facility or other type of facility as determined by the Board.

1.28 **"Restaurant"** means any dining and food preparation and serving facilities operated in the Common Area from time to time.

1.29 **"Restated Declaration"** means this First Amended and Restated Declaration of Restrictions and any amendments thereto.

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

1.31 **"Senior"** means an individual who is 55 years of age or older.

1.32 **"Unit" or "Living Unit"** means those portions of the Property shown and described on the Condominium Plan as a Living Unit; provided, however, that the following are not part of any Living Unit: bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in a Living Unit.

ARTICLE 2 PROPERTY

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

2.2 *Description of Land and Improvements; Ownership of Common Area.* The Property shall consist of Phase 1 Lot 2; Phase 2 Lot 3, Phase 3 Lot 7, Phase 4 Lot 5, Phase 5 Lot 1, and Phase 6 Lot 6. Ownership of the Property is as follows:

- 2.2.1 The Phase I Lot 2 Common Area is owned by Owners of Units in Phase 1 Lot 2 in equal undivided one-thirty-sixth (1/36) interests.
- 2.2.2 The Phase 2 Lot 3 Common Area is owned by Owners of Units in Phase 2 Lot 3 in equal undivided one-twelfth (1/12) interests.
- 2.2.3 The Phase 3 Lot 7 Common Area is owned by Owners of Units in Phase 3 Lot 7 in equal undivided one-thirty-sixth (1/36) interests.
- 2.2.4 The Phase 4 Lot 5 Common Area is owned by the Owners of Units in Phase 4 Lot 5 in equal undivided one-thirty-sixth (1/36) interests.
- 2.2.5 The Phase 5 Lot 1 Common Area is owned by the Owners of Units in Phase 5 Lot 1 in equal undivided one-fifth (1/5) interests.
- 2.2.6 The Phase 6 Lot 6 Common Area is owned by the Owners of Units and the Care Facility in Phase 6 Lot 6 in equal undivided one-thirteenth (1/13) interests.
- 2.2.7 Title to Lot numbers 4 and 8 Common Areas are vested in the Association.

The Owners of Units in any Phase Lot shall have a nonexclusive easement over the Common Area of such Phase Lot, and over the Common Area of all other Phase Lots. Such nonexclusive easements shall be subordinate to any separate ownership interests and any exclusive easements in such other Phase Lots.

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

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

2.5 *Presumption Regarding Boundaries of Units.* In interpreting deeds, declarations and plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, or this Restated Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown on the Condominium Plan or described in the deed and those of the building as

constructed or reconstructed. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of said encroachments so long as they shall exist.

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

2.7 Easements Over Common Area and Care Facility. Subject to the Rules and Regulations and the provisions of any applicable governmental license, each Owner has a non-exclusive right and easement, for themselves, and their guests, tenants, licensees and designees (including, without limitation, Approved Occupants), for ingress, egress and for reasonable enjoyment and use over and across and within the Common Area and the Care Facility. The foregoing rights and easements shall be appurtenant to and shall not be conveyed or otherwise transferred separately from each Owner's respective Condominium and shall be deemed to be conveyed or encumbered with each such respective Condominium even though the description in the instrument of conveyance or encumbrance may refer only to fee title to the Condominium. Nonexclusive easements are also reserved in favor of all necessary public, administrative and government employees, representatives and agents, including, without limitation, postal workers, police officers, fire fighters, utility company employees, and telephone installers, over the Common Area and the Care Facility for ingress and egress in order to provide necessary utility and other public services to those individuals and entities who own the Condominiums, and install, maintain, place and replace all public utility, installments, fixtures and services within or otherwise situated or placed upon or within the Project.

ARTICLE 3 ASSOCIATION

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

3.2 Board of Directors. The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in the Bylaws, who may perform their duties personally or delegate their duties as provided in the Bylaws.

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

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

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

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

- 3.6.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 4 herein.
- 3.6.2 The power to adopt reasonable Rules and Regulations governing the use of the Units, the Common Area, any common facilities and Association-owned property, and the conduct at Board and Members meetings, in accordance with the following:
 - (a) The Rules and Regulations may include, but are not limited to: reasonable restrictions on use by any person on the premises, including but not limited to the owners and their families, guests, employees, tenants, caregivers, companions, service providers, licensees and invitees; rules of conduct; the setting of reasonable administrative rules, fees, deposits and use fees for any recreational facilities; and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation of any provisions of the Governing Documents, subject to the Bylaws.
 - (b) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner.
 - (c) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.
- 3.6.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:
 - (a) Enforcement of the Governing Documents.
 - (b) Damage to the Common Area.
 - (c) Damage to any Units that the Association is obligated to maintain or repair.

- (d) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair.
- (e) Enforcement of payment of Assessments in accordance with the provisions of Section 4.6 herein.
- (f) Any other matter(s) in which the Association is a party, including, but not limited to contract disputes.

- 3.6.4 The right to discipline Owners for violation of any of the provisions of the Governing Documents by one or all of the following: (i) suspending the Member's membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Member's Unit, (ii) imposing monetary fines, and (iii) recording of a notice of noncompliance encumbering the Unit of the Owner, subject to reasonable notice and hearing requirements as provided in Section 7.1.6 of the Bylaws.
- 3.6.5 The right of its agents and employees to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any damage caused thereby shall be repaired by the Association at its own expense.
- 3.6.6 Subject to Sections 5.3.4(g) and 5.3.5, the power to grant permits, licenses and easements over, under and through the Common Areas for roads, utilities, cable television, sewer facilities and other purposes, (a) to serve the Common Area or the Condominiums, or (b) where necessary or convenient to satisfy or achieve appropriate governmental purposes or requests.
- 3.6.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the Board shall have the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.
- 3.6.8 The Board shall have the power to remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
- 3.6.9 The power to separately meter and charge owners for use of utilities by such means as may be determined in the sole discretion of the Board.

3.7 Board Approval Prior to Incurring Personal Charges. Personal Charges may be incurred only by Owners and Approved Occupants after prior approval by the Board. The Board may establish such procedures and requirements as it deems necessary, in its sole discretion, for approval of Owners and Approved Occupants to incur Personal Charges. Such requirements may include, without limitation, submittal of an acknowledged statement supported by applicable financial information verifying that the monthly income (including subsidies from relatives) after payment of rent for the Unit, if any, equals at least one hundred fifty percent

(150%) of the regular monthly Assessments for that Condominium. The Board may revoke an occupant's status as an "Approved Occupant" or an Owner's ability to incur Personal Charges for violation of this Restated Declaration and any Rules and Regulations, in which case the Association shall have the right, upon notice and hearing, to require that (i) the Owner(s) or occupant incur no further Personal Charges, or (ii) an occupant no longer occupy a Condominium, and that the Owner of the Condominium take whatever action is necessary to remove the occupant from the Project.

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

- 3.8.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components described in Section 6.3, or contract for the performance of that work, subject to the provisions of the Governing Documents.
- 3.8.2 The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Project, including, but not limited to:
 - (a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units. If separately metered or charged by either the utility provider or the Association, the costs thereof shall be assessed against Owners as a utility Assessment or as otherwise provided herein.
 - (b) The insurance policies described herein.
 - (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
 - (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

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

ARTICLE 4 ASSESSMENTS AND COLLECTION PROCEDURES

4.1 Covenant to Pay. Each Owner, by acceptance of the deed to the Owner's Condominium, is deemed to covenant and agree to pay to the Association the following Assessments and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration:

- 4.1.1 Regular Assessments. Concurrently with preparation of the financial documents and budget for the Association, the Board shall estimate the net charges to be paid during the next fiscal year, including a reasonable provision for contingencies, replacements and reserves for replacement of

Common Area improvements, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the Regular Assessments for the budgeted year. Regular Assessments shall be allocated among, assessed against and charged to each Owner in accordance with past practice on a weighted basis, based (generally) on the size of each Unit as more particularly provided in Exhibit "D" attached hereto and incorporated herein by reference. Failure of the Board to estimate the net charges within the time period stated herein shall not void any Regular Assessment imposed by the Board. Regular Assessments for fractions of any month shall be prorated. Each Owner is obligated to pay Regular Assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

- 4.1.2 Special Assessments. If the Board determines that the amount to be collected from Regular Assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or for any other reason, it shall make a Special Assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special Assessments shall be levied and collected in the same manner as Regular Assessments.
- 4.1.3 Reimbursement Assessments. Subject to the limitations of the Governing Documents, the Board may levy Reimbursement Assessments against Owners and Units whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or incurs any costs which by law or as required by the Governing Documents must be reimbursed by an owner. Prior to levying such a Reimbursement Assessment, the Board shall provide the Owner with reasonable notice and a hearing in accordance with Section 7341 of the Corporations Code. The notice and hearing regarding the levy of a Reimbursement Assessment may be combined with the notice and hearing regarding the underlying violation.
- 4.1.4 Utility Assessments. In the event any utilities are separately submetered or charged by the Association, each Owner shall be obligated to pay to the Association a Utilities Assessment. Such Utilities Assessment shall be composed of the costs for those utilities used by each Unit which are billed to the Association. The amount of the Utilities Assessment levied by the Association against a Unit shall be based upon each Unit Owner's and/or tenant's actual use of the respective utilities as determined by the Board in its discretion, and may vary from month to month based upon such usage.
- 4.1.5 Personal Charge Assessments. The Board shall levy against an Owner and his or her Unit, as a separate Assessment category, any Personal Charges incurred by an Owner or his or her Approved Occupant. The Board of Directors shall have the right to establish rules, regulations and policies with respect to the amount, collection and administration of Personal Charges, including:
 - (a) Requiring that any Owners or proposed occupants of a Condominium who will incur Personal Charges first register with and be

approved by the Board of Directors in accordance with Section 3.7 herein.

- (b) Establishing the amounts of any Personal Charges and distributing written copies thereof to the Owners not less than annually. The Board shall distribute additional copies if there are any changes in the schedule of Personal Charges.
- (c) Establishing credit limits and alternate financing arrangements for Personal Charges.
- (d) Establishing and maintaining billing and collection procedures for Personal Charges.

4.1.6 Monetary Penalty Assessments. The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Unit for any violations of the Governing Documents.

4.1.7 Individual Assessments. Due to the nature of the Project as a senior housing community, the Association may from time to time perform services or accomplish items of repair or maintenance at the request of an Owner or tenant even though it is the duty of the owner to accomplish that service or item of repair or maintenance. The Board may levy an Individual Assessment against the Owner and his or her Unit in an amount determined by the Board for providing any such services or performing such repair or maintenance, which amounts shall be set forth in a schedule of charges distributed to Owners not less than annually or when there is a change in the scheduled charges. This Individual Assessment is distinguished from the Reimbursement Assessments by the fact that the service provided or repair or maintenance accomplished when an Individual Assessment is levied, is at the request or direction of the Owner or tenant.

4.1.8 Additional Occupant Assessments. Since the Project is a senior housing community which offers certain services and amenities to each Unit which are affected by the number of occupants in a Unit, an Additional Occupant Assessment may be levied whenever more than one Person occupies a Unit. The amount of the Additional Occupant Assessments shall be determined by the Board of Directors, in its discretion, based upon the additional costs the Association incurs to provide additional services and amenities to the Unit. The Additional Occupant Assessments levied for any additional occupant in Units in the Project shall be assessed equally against all Units with an additional occupant.

4.2 Limitations on Regular and Special Assessments. Except in emergency situations, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a Regular Assessment per Unit that is more than twenty percent (20%) greater than the Regular Assessment for the preceding fiscal year, or levy Special Assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to Regular and Special Assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

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

Anything in this Restated Declaration to the contrary notwithstanding, all Assessments other than Regular and Special Assessments shall be separate from and not considered a part of either Regular or Special Assessments, and shall not be subject to the limitations on the increases or decreases thereof contained in this Restated Declaration or in Section 1366 of the California Civil Code or any successor statute or law.

4.3 Further Limitations on Regular Assessments. Any annual increases in Regular Assessments for any fiscal year, as authorized by Section 4.2, above, shall not be imposed unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.4 Notices for Regular, Special and Additional Occupant Assessments. The Association shall provide written notice to the Owners of (i) any increase in the Regular or Additional Occupant Assessments, or (ii) the imposition of a Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the increase in the Regular or Additional Occupant Assessment or Special Assessment becoming due.

4.5 Costs, Late Charges and Interest. Late charges may be levied by the Association against an Owner for the delinquent payment of Assessments. Any Assessment, including any installment payment thereof, is delinquent fifteen (15) days after its due date. If an Assessment is delinquent, the Association may recover all of the following from the owner:

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

No late charge may be imposed more than once for the delinquency of the same Assessment. However, the imposition of a late charge on any delinquent Assessment shall not eliminate or supersede charges imposed on prior delinquent Assessments. In the event the Association and an Owner enter into a payment agreement for installment payments of delinquent amounts, delinquent payments of the installment amounts may be subject to levying of late charges and interest as provided herein, provided that no late charge may be imposed more than once for the delinquent payment of the same installment amount. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.6 herein below.

4.6 Enforcement of Assessments and Late Charges. A delinquent Assessment and any related late charges, reasonable costs of collection (including actual attorneys' fees), penalties, and interest assessed in accordance with Section 4.5 herein ("Payment") shall become a lien upon the Condominium when a Notice of Assessment Lien is duly recorded as provided in Section 1367 of the California Civil Code or applicable statute. The Notice of Assessment Lien shall describe the amount of the delinquent Payment or installment thereof, the related charges authorized by this Restated Declaration, a description of the Condominium, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any officer or director of the Association, or any employee or agent of the Association authorized to do so by the Board.

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

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

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

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

4.7 Priority of Assessment Lien. The lien referred to in Section 4.6 shall be superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Sale or transfer of any Condominium shall not affect this lien, provided that the transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for payments which became due prior to the transfer, except for those liens

recorded prior to the First Mortgage. No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof.

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

4.9 *Priority of Payments.* Payments received by the Association from Owners shall be applied towards (1) collection costs, including attorneys' fees, (2) Monetary Penalty Assessments, (3) interest, (4) late charges, (5) Individual Assessments, (6) Personal Charge Assessments, (7) Additional Occupant Assessments, (8) Reimbursement Assessments, (9) Utility Assessments, (10) Special Assessments, and (11) Regular Assessments, in that order.

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

4.11 *Personal Debt; No Waiver.* An Assessment and any late charges, reasonable costs of collection including reasonable attorneys' fees, and interest, as assessed in accordance with the provisions of this Article, shall be a debt on the Condominium and also be a personal debt of the Owner of the Condominium at the time the Assessment or other sums are levied. An Owner may not waive or otherwise escape liability for the Assessments by nonuse of any portion of the Common Area, including but not limited to the restaurant or any services customarily provided by the Association, or abandonment of the Owner's Condominium. Nonuse of any Common Area facility or service may not be used as a set-off to decrease the amount of any duly levied Assessment.

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

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

4.14 *Separate Taxes and Assessments.* Each Owner shall execute such documents and take such action as may be reasonably required, as determined by the Board of Directors, to obtain separate assessments for any taxes, assessments, or charges which may under local law become liens prior to the first mortgage on a Condominium. In the event any of the above taxes, assessments or charges are for any reason not separately levied upon the Condominium responsible therefor, then such taxes, assessments or charges shall be paid by the Association and thereupon a special Assessment may be levied by the Association in the amount of such taxes, assessments or charges against the Condominium(s) responsible for such taxes, assessments or charges.

4.15 *Meal Credits.* Provided the payment is not delinquent, then upon payment of the Regular Assessment for a given month, the Owner or the Approved Occupant of his or her Unit, but not both, shall receive one Meal Credit for each day of the corresponding Meal Credit

Period for each Unit owned by such owner. For purposes of this Section, "Meal Credit" refers to credits or allowances which may be redeemed in the Restaurant for meals, and "Meal Credit Period" shall refer to the period of time established by the Board for such purpose. Redemption of Meal Credits shall be subject to such reasonable rules and regulations as may be adopted by the Board from time to time. Meal Credits which remain unredeemed for more than three Meal Credit Periods will automatically expire, without notice or hearing. Meal Credits will also expire upon a change in occupancy of a Unit. Notification of the number of unredeemed Meal Credits and the cost associated with a Meal Credit shall be included with the monthly Assessment statement. Owners shall have the right to assign their Meal Credits to Approved Occupants and guests subject to any Rules and Regulations. If an Owner, Approved Occupant or guest redeems more than the number of accumulated unredeemed Meal Credits in the Owners' account, the responsible Owner shall be charged for each redeemed Meal Credit in excess of the accumulated unredeemed Meal Credits. The charge to the Owner shall be the amount established annually by the Board based upon the cost of providing meals. Accumulated unredeemed Meal Credits may not be conveyed to a buyer upon conveyance of a Unit but shall automatically expire upon close of escrow for the Unit.

4.16 Restrictions on Distribution of Income. In no event shall any of the income of the Association be distributed to any of the Members; rather, any such income shall be utilized to satisfy the cost of all Association functions and otherwise establish the reserves set forth herein.

ARTICLE 5 USE RESTRICTIONS AND COVENANTS

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

5.2 Minimum Age Requirements. This Project and Association shall be operated as housing for older persons. Thus, residency on any of the Lots or other property subject to this Declaration shall be restricted to older persons to the fullest extent permitted by federal, state and local law. Specifically, the Association and its Members shall each be empowered to enforce compliance with all applicable federal, state and local laws, as defined below, which permit age restrictions in housing (including, without limitation, the Fair Housing Amendments Act of 1988, 42 U.S.C. Section 3601 et seq. and the California Unruh Civil Rights Act, California Civil Code Section 51 et seq.), as any such Laws may be amended from time to time hereafter.

It is likely that there will be further changes in the Laws affecting housing for older persons after the date this Declaration is recorded. Therefore, to avoid further amendments to this Declaration, which may be needed due to subsequent changes in the Laws pertaining to age restrictions, the Association's Board of Directors shall be empowered to promulgate Rules and Regulations to implement and comply with any such Laws and to amend such Rules and Regulations from time to time to achieve compliance with any subsequent legislation or court rulings pertaining to age restrictions. The age restriction provisions of this section shall be deemed to have been amended by any Rules and Regulations promulgated by the Board under the authority of this section, and all Owners, residents and prospective purchasers shall be deemed to have constructive notice of any such Rules and Regulations promulgated by the Board.

The following are the minimum requirements applicable at the time this section is enacted. To comply with the Fair Housing Amendments Act of 1988, occupancy of each Unit in this Project

shall be restricted to at least one (1) person fifty-five (55) years of age or older. Furthermore, to comply with the requirements of the Unruh Civil Rights Act, all residents of this Project shall be fifty-five (55) years of age or older, unless a resident qualifies under one of the exceptions to the age requirements of the Unruh Civil Rights Act.

Notwithstanding any exceptions which arguably may be permitted by the Unruh Civil Rights Act, at least eighty percent (80%) of the residential Lots in this Project shall be occupied by at least one (1) person fifty-five (55) years of age or older. The intent of this last provision is to permit a former resident's spouse, who is under fifty-five (55) years of age, to reside in the former resident's Unit after any permanent departure from the Unit by the resident who was fifty-five (55) years of age or older, whether due to death, divorce or any other reason. Such persons, who are under fifty-five (55) years of age, may continue to reside in the former resident's Unit until such time as the Unit is sold or transferred to any other person, but in no case may any such person reside in the Unit if such residency would cause the number of Units occupied solely by persons under fifty-five (55) years of age to exceed twenty percent (20%) of the Units in the Project. Units sold or transferred by persons under fifty-five (55) years of age, who occupied said Unit by virtue of this provision, shall be occupied, after sale or transfer, by at least one (1) person fifty-five (55) years of age or older.

For purposes of this section, the word "Law" shall include without limitation, all statutes, ordinances and other forms of legislative enactments and amendments, administrative regulations, administrative rulings and guidelines, and decisions and interpretations from or arising out of administrative enforcement proceedings and court decisions. For purposes of this section the word "Declaration" shall have the meaning set forth in California Civil Code Section 1351, or any successor statute.

In the event of any inconsistency or conflict between the provisions of this section and any other provision of the Declaration, the terms of this section shall control. Furthermore, in the event of any inconsistency among the provisions of federal law, state law, local law, this Declaration, ~~and the Association's Rules and Regulations, the Association's Rules and Regulations and this Declaration~~ shall be controlled by the provisions of federal law, state law and local law, in that order.

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

- 5.3.1 The Association shall have an easement in, to, and throughout the Common Area and the improvements thereon to perform its duties and exercise its powers.
- 5.3.2 Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition.
- 5.3.3 Subject to the provisions of this Restated Declaration, each owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use an area.
- 5.3.4 The Owners' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, and the right of the Association, subject to the limitations of any laws or the Governing Documents, to:

- (a) Adopt and enforce reasonable rules and regulations for the use of the Common Area and the Project. These rules may include, without limitation, reasonable restrictions on:
 - (i) the use of recreational facilities by an Owner or tenant's employees unless such use is for the purpose of assisting or caring for the Owner or tenant.
 - (ii) The use of the Care Facility.
 - (iii) The use and access to certain areas used by the Association to provide services to the residents, including the Restaurant, kitchen and wait-stations, administrative offices, nursing stations, equipment, maintenance, storage and utility rooms, and areas of a similar nature.
- (b) Reasonably limit the number of persons using the Common Area.
- (c) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (d) Remove any vehicle within the Project parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto.
- (e) Suspend the voting rights of any Owner, and the rights of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the ~~Common Area for any period during which the Owner is delinquent in~~ the payment of any Assessment, fine or monetary penalty, or as otherwise provided in the Governing Documents.
- (f) Cause the construction of additional improvements to the Common Area, or to cause the alteration or removal of existing improvements to the Common Area.
- (g) Grant, dedicate, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area, including a grant or consent to allow one or more owners to exclusively use portions of the Common Area subject to the Governing Documents with the approval of two-thirds (2/3) of the total voting power of the Association.
- (h) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project.
- (i) Approve any proposed alteration of or modification to the Common Area or any Unit.
- (j) Charge reasonable admission, use and other fees for use of any recreational facilities situated upon the Common Area, Care Facility and/or the Restaurant. Such fees may include but are not limited to

parking fees, meal and activity charges and any other items that fall within the category of Personal Charges.

- 5.3.5 The Association, with the approval of two-thirds (2/3) of the total voting power of the Association, may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or other purposes reasonably related to the operation of the Project, and each Owner, in accepting his or her deed to the Unit, expressly consents to these easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit.
- 5.3.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have delegated his or her rights to use and enjoy the Common Area and the amenities and services provided by the Association to the contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective.
- 5.3.7 All internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, is allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.
- 5.3.8 The Board shall have the right, with the approval of two-thirds (2/3) of the total voting power of the Association, to allow one or more owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and, provided further that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.
- 5.4 **General Restrictions on Use.** In exercising the right to occupy or use a Unit or the Common Area and its improvements, the Owner, approved occupant, and the Owner's family, guests, employees, personal or private duty companion, tenants, and invitees shall not do any of the following:
- 5.4.1 Attempt to further subdivide a Unit without obtaining the prior approval of the Association.
- 5.4.2 Occupy or use a Unit, or permit all or any part of a Unit to be occupied or used, without Board approval, for any purpose other than as a private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Project, (b) do not cause any external effects which are detrimental to neighboring Units or the Project, and (c) are compatible with the characteristics of residential use in the Project.

5.4.3 Lease a Unit in derogation of the following:

- (a) Except as provided in Section 5.4.15 herein, all leases must be in writing and in a format substantially similar to any standard lease form required by the Board.
- (b) All leases must be for the entire Unit and not merely parts thereof, unless the Owner remains in occupancy.
- (c) No lease shall be for a period of less than thirty (30) days.
- (d) All leases shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association.
- (e) The lessee may apply for approval as an Approved Occupant.
- (f) An Owner who leases their Unit shall promptly notify the Association in writing of the names of all tenants and members of a tenants' family occupying such Unit.
- (g) All Owners leasing his or her Unit shall promptly notify the Association of the address and telephone number where such Owner can be reached.

5.4.4 Permit anything to obstruct the Common Area or store anything in the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.

5.4.5 Perform any act or keep anything on or in any Unit or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law.

5.4.6 Disconnect, damage, tamper with or otherwise modify any protection system, including, but not limited to, fire sprinklers, fire alarms, fuse boxes and any emergency call system(s).

5.4.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials in the Common Area or in any Unit, provided, however, that reasonable amounts of these liquids, substances or materials may be placed in appropriate containers and properly stored.

5.4.8 Erect or display any sign on or from any Unit except as allowed by Sections 712 and 713 of the California Civil Code. No signs may be erected or displayed on the Common Area except (i) those signs allowed by this provision, and (ii) with the prior written approval of the Board.

- 5.4.9 Alter or modify the installed cable television system, except upon the written consent of the Board.
- 5.4.10 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions. Notwithstanding the foregoing, an Owner may erect a video or television antenna, including a satellite dish, thirty six inches (36") or less in diameter or diagonal measurement, with Board approval. The Board may impose reasonable restrictions in approval of any such antenna, including those contained in the Governing Documents and California Civil Code § 1376.
- 5.4.11 Engage in any illegal, noxious or offensive activity in any part of the Project, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Project.
- 5.4.12 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 5.4.13 No trailer, camper, motor home, commercial vehicle, truck (other than standard size pickup truck or van), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project without prior approval by the Board or its agent. Commercial vehicles shall not include sedans or standard size pickup trucks or vans which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy, smoky or uninsured vehicles shall be operated on the Project. Insurance shall be in amounts and types normally required for operation of motor vehicles by the State of California. The Association or its agent shall have the power to deny entry to the Project, or remove from the Project, any vehicle whose operator refuses to produce acceptable proof of insurance. No off-road unlicensed motor vehicles, excluding golf carts, shall be operated upon the Project.
- 5.4.14 Keep or maintain any fixture, personal property or other object upon any Condominium or Exclusive Use Common Area which interferes with the enjoyment of adjacent Units or Exclusive Use Common Areas or which may be in derogation of any Rules duly adopted by the Board.
- 5.4.15 Number of Occupants: No more than two (2) individuals may occupy any Condominium except that three (3) individuals may occupy a two (2) bedroom Condominium if one (1) of such individuals is a Personal or Private Duty Companion.
- 5.4.16 No Owner may rent or lease a carport or parking space without prior approval of the Board or its agent.

5.5 *Pets.* No Owner, Approved Occupant, nor any other resident may obtain, maintain, keep or replace any pet(s) or other animal(s) in or on the Project except as permitted by Rules and Regulations adopted by the Board. Such Rules and Regulations may include, without limitation, limitations on the types, sizes and numbers of pets, registration requirements, vaccination requirements, standards of conduct, regulations regarding care of the animal(s) during absence or incapacity of the Owner or resident, and other requirements which will insure that any pet or animal will not disrupt the quiet enjoyment of residents, create a dangerous or threatening condition to either itself or any resident, or damage any property in the Project. In the event the Board

determines, after notice and a hearing, that any pet(s) or other animal(s) violate any Rules and Regulations, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. The Association, its Board, officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Project, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, officers, employees and agents.

5.6 Conversion to Low-Flow Toilets. From and after the date of recording this Restated Declaration, each Owner shall be responsible for converting the toilet(s) in such Owner's Unit to "low-flush" toilets (e.g. toilets which use one and one-half gallons per flush or less) upon conveyance of the Unit.

5.7 Damage Liability. Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.8 Fire Safety.

- 5.8.1 Inspections. The Owner shall admit an authorized representative of the Association, the Fire Chief or his authorized representative to every Unit to perform fire safety inspections. Such inspections shall be made only during normal working hours, except in an emergency.
- 5.8.2 Use of Cooking Devices on Balconies and Decks. No heating or cooking devices of any kind shall be used on the balconies or decks without the written permission of the Association and the Fire Department. Such devices include, but are not limited to, kerosene heaters, barbecues, electric ranges and similar devices.
- 5.8.3 Storage of Flammable Items in Units. No storage of hazardous or flammable liquids or gases shall be allowed in the Units at any time without prior written permission of the Association and the Fire Chief. This specifically includes, without limitation, oxygen concentrators.
- 5.8.4 Enclosures. Any enclosure of any balcony requires the prior written consent of both the Association and the Fire Department.
- 5.8.5 Storage on Balconies. All furniture and combustible storage on the balconies requires the prior written consent of the Association and the Fire Department. Such approval shall not be granted unless all components have a flame spread of less than 25 and a smoke contribution rating of less than 450.
- 5.8.6 Exceptions to this Section. The Association and Fire Department may approve exceptions to the Restrictions contained in Sections 5.8.2 and 5.8.3 above if the balcony or deck is provided with an automatic sprinkler head from the automatic sprinkler system at the Project.

5.8.7 Amendments of this Section. The provisions of this Section may be amended or abrogated by the Association only with the prior written consent of the Fire Department.

5.8.8 Gas Fireplaces. Prior to conveyance of title to any Unit, any gas fireplace shall be modified to have an electronic ignition and timer. The selling Owner shall be responsible for notifying the Association of compliance with this provision.

5.9 *Private Duty Personnel.* Any resident (Owner or Approved Occupant) who hires any person to perform any function or provide any goods or services on premises, (be said employees or contractors functioning as caregivers, companions, service providers, workers and the like, or as related to any other invitee, licensee, guest or vendor), hereinafter referred to as "Private Duty Personnel," shall comply with the following provisions:

5.9.1 Contracts with the Private Duty Personnel shall contain provisions requiring the Private Duty Personnel to comply with the Governing Documents, including the Rules and Regulations. The Association shall have the right to adopt additional reasonable rules and regulations with regard to the conduct of Private Duty Personnel, which may include, but not be limited to, the following:

(a) Requiring the Private Duty Personnel to complete and periodically update a registration and information form.

(b) Requiring the Private Duty Personnel to provide fingerprint samples.

(c) Requiring the Private Duty Personnel to provide proof of identification, such as a valid drivers license, proof of adequate licensure for the specific work being performed, proof of U.S. citizenship or the legal right to live and work in the U.S. and proof of a negative test for tuberculosis or chest x-ray.

(d) Requiring that Private Duty Personnel wear a name badge while on the Project.

5.9.2 The Owner or Approved Occupant shall obtain appropriate and sufficient liability and Worker's Compensation insurance coverage for Private Duty Personnel in a type and amount as established by the Board, or if not established by the Board, in a type and amount as reasonable under the circumstances.

5.9.3 Owners and Approved Occupants who hire Private Duty Personnel shall be solely responsible for compliance with all laws, including but not limited to, payroll tax withholding, reporting and payment requirements.

5.9.4 Failure to comply with the requirements of this Section shall be grounds for ejecting or rejecting access to the Project by any Private Duty Personnel.

5.10 *On Premises Drivers Must Possess Valid Drivers Licenses.* No one may drive any motor vehicle on Association premises without a valid driver's license. The Association or its agent shall have the power to deny entry to the Project, or remove from the Project, the vehicle of any person who refuses to produce a valid driver's license. For purposes of this

Section, a driver's license shall be considered valid if it is current with the applicable motor vehicle department.

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

5.12 Disposal of Medical Waste. The disposal of all medical waste by Owners, guests, Private Duty Personnel and any other Person shall comply with all applicable local, State and Federal regulations.

ARTICLE 6 REPAIR AND MAINTENANCE

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

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

6.3 Division of Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of his or her Unit, Exclusive Use Common Areas appurtenant to the Unit, and those items located anywhere within the Project which are used exclusively by that Owner, in a clean manner, consistent with the surrounding properties, and to ensure that such area does not pose a threat to the health, safety or welfare of other Owners. The replacement of exterior items shall be subject to the requirements of Article 7, herein. The Association shall be responsible for the maintenance, repair and replacement of the Common Area, excluding those items (i) for which the maintenance, repair and replacement is allocated to the owners by Exhibit "E" and (ii) which are used exclusively by one Owner. Attached hereto as Exhibit "E," and incorporated herein by reference, is a listing of the allocation of responsibility for various components in the Project. In the event of any inconsistency between the general provisions of this Section and the specific provisions of Exhibit "E," the provisions of Exhibit "E" shall prevail. Provided any item is not listed in Exhibit "E," the responsibility for its maintenance shall be determined in accordance with the provisions of this Section or as otherwise provided by statute or law. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

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

- 6.4.1 Each Owner shall be responsible for the maintenance and repair of their personal property and their Unit as required to control the presence of or damage caused by wood-destroying pests or organisms.
- 6.4.2 The Association shall be responsible for the maintenance and repair of the Common Area as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code Section 1364.
- 6.4.3 The Association shall have the power to temporarily remove any Unit resident for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The costs of any temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association shall give notice of the need to temporarily vacate a Unit to the record owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation.
- 6.4.4 Neither the Association, the Board, officers, agents and employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.
- 6.4.5 Notwithstanding anything else herein, in the event that an Owner wishes to ~~obtain a termite clearance certificate for any purpose, the Owner shall be~~ solely responsible for any and all costs associated with obtaining the certificate, including, without limitation, the costs of maintenance and repair of the Unit, Exclusive Use Common Area, or Common Area which may be necessary to obtain the termite clearance certificate. An Owner or group of Owners may agree, in a signed written document delivered to the Association, containing such reasonable assurances as the Board may request, to share the above costs.

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

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

If the culpable owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and hearing procedures as provided for the

imposition of monetary fines or suspensions, may charge the cost of those repairs to such owner as an Individual or special Assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the culpable owner shall be responsible for the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, the Owner shall be responsible for the total cost of repair.

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

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

ARTICLE 7 ARCHITECTURAL AND DESIGN CONTROL

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

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

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

- 7.3.1 Modifications or alterations of the exterior of any Unit must have the prior written consent of the Board or assign, including any modifications to facilitate handicapped access as provided by Section 1360 of the California Civil Code. Any approval of such handicapped access modification may be conditioned on such modification's removal, by the Owner at his or her sole expense, once the handicapped access is no longer necessary for the Unit. If removal of such modification is required, the area modified shall be returned to the condition existing at the time of the installation of the access modification plus any additional changes required to meet the requirements of any applicable building codes or other codes in force at the time the removal is made.
- 7.3.2 Installation of any carpet, tile or other floor covering must have prior approval of the Board or assign. The review shall be limited to the potential sound transfer between Units. Plans which do not adequately mitigate sound transfer in the sole discretion of the Board or assign shall be denied. In deciding upon floor coverings, Owners shall take all reasonable measures to choose floor coverings that mitigate sound transfer between Units. The Board shall have the power to order an Owner who has not complied with this Section to remove and replace any floor covering which does not adequately mitigate sound transfer.
- 7.3.3 No Owner may install any shutter, screen, blind, curtain, drape or other appurtenance in or on any window or door except those items which are in conformance with standards established by the Board.
- 7.3.4 Consistent with Section 5.8.4, no owner may enclose his or her Unit's patio, balcony or deck without the prior written consent of the Board.
- 7.3.5 ~~Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter any Exclusive Use Common Area or the Common Area without the prior written consent of the Board.~~

*Amended
MISC. Articles*

7.4 Architectural Changes Not Requiring Prior Approval. Notwithstanding Section 7.2 and 7.3 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his or her Unit any color desired, or to improve or alter any improvements within the interior of the Unit, provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Units.

7.5 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be as follows:

- 7.5.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used, and location of any proposed improvements, alterations or landscaping, as well as the proposed service providers and/or contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the Board or its assign.
- 7.5.2 The Board or assign shall review the submission and provide a written approval or disapproval of any such submission, including the reasons for

any decision, to the requesting Owner within sixty (60) days of receipt of such submission.

7.5.3 In the event the Board or its assign fails to provide a written response to the requesting Owner within sixty (60) days of receipt of the request from the Owner, approval will not be required and the related covenants shall be deemed to have been fully satisfied.

7.5.4 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

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

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

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

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

The Architectural Rules may set forth days, times and hours that work may be permitted within the Project, and require service providers and contractors to comply with Section 5.9 and other provisions of the Governing Documents. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

7.9 Variances from Architectural Rules. Upon application by an affected Owner, the Board may grant variances from the requirements of the Architectural Rules, provided that such variance is reasonably necessary in order to carry out the general purpose and intent of the Governing Documents, or is necessary to avoid extensive hardship, expense or impossibility of

conformance. Any variance shall be in writing and shall not constitute a waiver of any Architectural Rule or hinder the enforcement thereof.

7.10 Assignment of Approval/Disapproval. The Board may assign its responsibility to approve or disapprove any architectural submission provided such submission falls within the guidelines set by the Architectural Rules. However, the assign may not grant variances or approve or disapprove of any architectural application which does not comply with the guidelines established in the Architectural Rules.

7.11 Liability. Neither the Board, any member thereof, nor any assign shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of a certificate, pursuant to Section 7.6 above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

7.12 Enforcement. In the event of a violation of any of the provisions of this Article by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Board, the Board shall have the right and authority, after proper notice and the opportunity for a hearing, to perform the subject matter of such directive including, if necessary, the right to enter the Unit where a violation of these restrictions exists. The cost of such performance shall be charged to the Owner of the Unit in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Board together with such interest and reasonable attorney's fees and costs in an action at law or in equity against such Owner.

7.13 Non-Compliance with Laws. Neither the Association nor the Board shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

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

ARTICLE 8 DINING, CARE CENTER AND OTHER SERVICES

8.1 General. The Association shall be responsible for the operation and maintenance of the Residential Care Facility Condominium and the Restaurant. The Board shall have the right to establish rules, regulations and policies governing the Care Facility and Restaurant, which shall be subject to the provisions of this Article 8.

8.2 *Use of Services.* Use of and stays in the Restaurant and the Care Facility shall be chargeable on a "services provided" and/or "per diem" basis (except for any meals expressly included in the Association's budget) and shall not be included in regular or special Assessments; this is not to say, however, that the proceeds of Assessments cannot be used for purposes relating to the operation, maintenance and use of the Care Facility or the Restaurant.

8.3 *Use of Care Facility Beds.* While Owners and Approved Occupants may be given priority admissions status, on a first-come first-served basis, the Association may, at its discretion, decide to leave beds in the Care Facility vacant for anticipated use by Owners and Approved Occupants or, alternatively, make beds available to the general public for a charge.

8.4 *No Guarantee of Use.* Ownership and/or residency in a Condominium does not guarantee entry and use of the Care Facility or Restaurant.

8.5 *Termination of Use and Access.* If an Owner or Approved Occupant of a Condominium is unable or unwilling to pay his or her Personal Charges, the Association shall have the immediate right, without liability, but subject to any requirement of any governing body, to terminate that Owner's or Approved Occupant's use or access to the Care Facility or Restaurant.

8.6 *Licensing.* The Association and its management agent shall, in all cases, obtain and maintain appropriate licensing for the type of facilities that the Association is then operating upon the Project.

ARTICLE 9 INSURANCE

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

9.2 *General Liability Insurance.* The Association shall obtain and maintain a policy or policies insuring the Association, its officers, directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than three million dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion. Such policies shall include a provision for at least ten (10) days prior written notice to the Association, and to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

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

their capacity as officers and directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

9.4 Fidelity Bond Coverage. The Association shall also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If there is a management agent who handles Association funds, such agent shall also be covered by a fidelity bond. This coverage may be in an amount as determined by the Board from time to time; provided that in no event may the aggregate amount of these bonds be less than a sum equal to three (3) month's aggregate Assessments on all units plus reserve funds. The bonds must contain a provision that they may not be canceled or substantially modified without at least ten (10) day's prior written notice to the Association and to any Eligible Lender.

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

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

9.7 Failure to Acquire Insurance. The Association, and its directors and officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

9.8 Trustee for Policies. The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 10 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

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

9.10 Insurance Policy Deductibles. As provided in Section 9.1 above, the Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 9.10.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to an item of personal property, or for which the Owner is responsible.
- 9.10.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any item owned by the Association, or for which the Association is responsible.
- 9.10.3 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner, the responsible owner shall be liable for the cost of the deductible.

9.11 Insurance Disclosures. The Association is obligated to disclose to the Owners such information regarding insurance coverage as required by statute or law, including Sections 1365 and 1365.9 of the Civil Code, and any successor statutes or laws.

9.12 Individual Property Insurance. Except as provided in this Section, no Owner may separately insure any Common Area property, or any part of it, against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 9.1. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.1 that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner shall be liable to the Association to the extent of any diminution. An Owner shall insure his or her personal property against loss. In addition, any improvements made by an Owner within his or her Unit shall be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any First Lender of such Unit.

9.13 Individual Liability Insurance. An Owner shall carry personal liability and property damage liability insurance with respect to his or her Unit. The Board may, in its sole discretion, from time to time, determine minimum amounts of coverage. All such insurance that is individually carried shall include a waiver of subrogation clause acceptable to the Board and to any First Lender of such Unit.

ARTICLE 10 DAMAGE OR DESTRUCTION

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

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

10.2 Cost of Repair. Any cost of repair or replacement in excess of insurance proceeds, if any, and reserves shall be a common expense, levied against Condominiums in the

same proportion as regular Assessments are levied, provided that an Assessment against Owners to raise funds for the rebuilding or major repair of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed.

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

10.4 Replacement of Less Than Entire Project.

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

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

- (a) Any insurance proceeds attributable to a Unit and Exclusive Use Common Area that are not rebuilt must be distributed to the Owner of that Unit and the Owner of the Unit to which the Exclusive Use Common Area is appurtenant, or to lien holders, as their interests may appear.
- (b) The remainder of any proceeds must be distributed to each Unit Owner or lien holder, as their interests may appear, in proportion to the interests of all the Units.
- (c) If the Owners vote not to rebuild a Unit, the common interest portions of the Unit shall be reallocated among all other Units, and the Association shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

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

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

10.7 Disbursements to Owners and Lenders. Any insurance proceeds distributed to Owners and Lenders shall be distributed proportionately according to the fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal

shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

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

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

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

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

ARTICLE 11 EMINENT DOMAIN

11.1 Representation by Association. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or any part thereof. In furtherance of this purpose, each Owner, by acceptance of a deed to his or her Condominium, irrevocably appoints the Association as their attorney-in-fact to represent the Owners in any such condemnation proceeding(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement, less any fees or costs incurred in collection thereof, shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the owners and their Lenders as their interests may appear.

11.2 Common Area Taking. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation, less any costs and fees incurred in collection thereof, shall be distributed among Owners of Condominiums and their respective Lenders according to the relative values of the Condominiums affected by the condemnation.

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

11.4 Substantial Taking. If there is a substantial taking of the Project (more than fifty percent), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code Section 1359 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association. The proceeds

from the partition sale, less any costs or fees incurred in collection thereof, shall be distributed to the Owners and their respective Lenders in proportion to the fair market values of the Condominiums.

ARTICLE 12 RIGHTS OF LENDERS

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

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

12.3 Unpaid Dues or Charges. Where the Lender of a first Mortgage of record or other purchaser of a Unit obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or Assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or Assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his successors and assigns.

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

12.4.1 By act or omission seek to abandon or terminate the Project as a condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).

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

12.4.3 Partition or subdivide any Condominium.

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

12.4.5 Use hazard insurance proceeds for losses to any of the Project (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such property.

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

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

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

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

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

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

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

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

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

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

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

12.12 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately

preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

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

ARTICLE 13 ENFORCEMENT

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

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

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

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

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

ARTICLE 14 AMENDMENTS

14.1 **Owner Approval of Amendments.** This Restated Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent (51%) of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

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

14.2 Eligible Lender Approval of Amendments. Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project, the consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend any material provisions of this Restated Declaration which establish, provide for, govern or regulate:

- 14.2.1 Voting rights.
- 14.2.2 Assessments, assessment liens or subordination of such liens.
- 14.2.3 Reserves for maintenance, repair and replacement of the Common Area.
- 14.2.4 Insurance or fidelity bonds.
- 14.2.5 Rights to use the Common Area.
- 14.2.6 Responsibility for maintenance and repair of the several portions of the Project.
- 14.2.7 Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
- 14.2.8 Boundaries of any Unit.
- 14.2.9 An Owner's interest in the Common Area.
- 14.2.10 Convertibility of Units into Common Area, or Common Area into Units.
- 14.2.11 Leasing of Units.
- 14.2.12 Imposition of any rights of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium.
- 14.2.13 Establishment of self-management by the Association when professional management has been required by an Eligible Lender.

14.3 Amendment of Lender Protection Provisions. The consent of sixty-seven percent (67%) of the voting power of the Association and the approval of fifty-one percent (51%) of Eligible Lenders shall be required to add or amend any provision which is for the express benefit of holders or insurers of First Mortgages on Condominiums.

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

ARTICLE 15
GENERAL PROVISIONS

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

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

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

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

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

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

15.7 *Fair Housing.* Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, marital status or physical handicap. However, all residents are aware that this is a senior community.

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

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

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


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

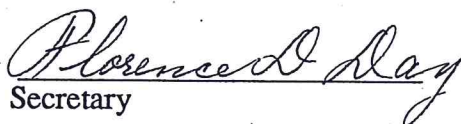
15.11 Governing Document Priorities. In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) the Condominium Plan, (3) this Restated Declaration, (4) the Bylaws, and (5) the Rules and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

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this 25th day of January, 1996.

DECLARANT:

CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION,
a California nonprofit mutual benefit corporation

By: 
President

By: 
Secretary

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On January 25, 1996, before me, Linda Lee Leal, Notary Public, personally appeared G. M. Swenson and Florence D. Day

personally known to me

- OR -

proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.



Linda Lee Leal
Notary Public

EXHIBIT "A"
PROJECT LEGAL DESCRIPTION

That certain real property in City of San Marcos, County of San Diego, State of California, more particularly described as follows:

Lots 1 through 8, inclusive, of COUNTY OF SAN DIEGO TRACT NO. 4471, in the County of San Diego, State of California, according to Map thereof No. 11262, filed in the Office of the County Recorder of San Diego County, June 20, 1985.

EXHIBIT "B"
BUILDING TYPE / LOT NUMBER

The developer developed the Property by building thereon six (6) residential Condominium buildings, consisting of 137 residential units and one Care Facility Condominium; plus a Community / Administration / Restaurant building; plus an Entry Gate building, per the table below.

Lot Number	Building Letter	Type of Building	Number of Units	Phase
1	F	Residential	5	5
2	A	Residential	36	1
3	E	Residential	12	2
4	--	Community / Administration / Restaurant	--	--
5	B	Residential	36	4
6	D	Residential Plus One Care Facility	13	6
7	C	Residential	36	3
8	--	Entry Circle / Guardhouse	--	--

EXHIBIT "C"
DESCRIPTION OF PROJECT, DIVISION OF PROPERTY,
AND CREATION OF PROPERTY RIGHTS

1. Description of Project: The developer constructed six (6) Condominium buildings containing Living Units and other ancillary appurtenances and facilities. Reference is made to the Condominium Plan(s) to supply further details concerning these Condominium Buildings and the Living Units therein.

2. Division of the Project: The Project is divided into the following separate freehold estates:

(a) Living Units: Each of the One hundred thirty-seven (137) Living Units, as separately shown, numbered and designated in the Condominium Plan for each Lot of the Property (see table below) was recorded in the Office of the San Diego County, California, Recorder, on Date and Document shown.

Lot	Bldg	Phase	Annexation		Condominium Plan	
			Recorded On	Document No.	Recorded On	Document No.
1	F	5	Oct. 7, 1987	87-566255	Oct. 7, 1987	87-566254
2	A	1	Original Property	Original Property	Aug. 13, 1985 Feb. 21, 1986	85-290872 86-069588
3	E	2	Sep. 13, 1985	85-337853	Aug. 13, 1985 Feb. 21, 1986	85-290872 86-069588
5	B	4	Feb. 25, 1987	87-103240	Feb. 25, 1987	87-103240
6	D	6	Feb. 1, 1988	88-046040	Feb. 1, 1988	88-046041
7	C	3	Jan. 17, 1986	86-022727	Jan. 17, 1986	86-022726

Each of the Living Units consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of each Living Unit. Each Living Unit includes both the portions of the building so described and air-space so encompassed. A Living Unit does not include those areas and those things which are defined herein as "Common Area." In the event any portion of the Common Area encroaches upon any Living Unit and (or) the Care Facility Condominium as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for maintenance of the same shall exist, so long as the encroachment exists.

EXHIBIT "D"
ASSESSMENT SCHEDULE

1586

Unit Number	Percentage* of Regular Assessment	Unit Number	Percentage* of Regular Assessment	Unit Number	Percentage* of Regular Assessment	Unit Number	Percentage* of Regular Assessment
A101	0.64%	B101	0.79%	C101	0.79%	D101	0.64%
A102	0.79%	B102	0.78%	C102	0.79%	D102	0.79%
A103	0.76%	B103	0.64%	C103	0.76%	D103	0.79%
A104	0.64%	B104	0.76%	C104	0.64%	D104	0.79%
A105	0.64%	B105	0.76%	C105	0.64%		
A106	0.76%	B106	0.64%	C106	0.76%	D201	0.64%
A107	0.76%	B107	0.76%	C107	0.76%	D202	0.79%
A108	0.64%	B108	0.64%	C108	0.64%	D203	0.79%
A109	0.64%	B109	0.64%	C109	0.64%	D204	0.79%
A110	0.76%	B110	0.76%	C110	0.76%		
A111	0.79%	B111	0.79%	C111	0.79%	D301	0.64%
A112	0.64%	B112	0.78%	C112	0.79%	D302	0.79%
						D303	0.79%
A201	0.64%	B201	0.79%	C201	0.79%	D304	0.79%
A202	0.79%	B202	0.78%	C202	0.79%		
A203	0.76%	B203	0.64%	C203	0.76%	E101	0.78%
A204	0.64%	B204	0.76%	C204	0.64%	E102	0.79%
A205	0.64%	B205	0.76%	C205	0.64%	E103	0.76%
A206	0.76%	B206	0.64%	C206	0.76%	E104	0.76%
A207	0.76%	B207	0.76%	C207	0.76%	E105	0.78%
A208	0.64%	B208	0.64%	C208	0.64%	E106	0.79%
A209	0.64%	B209	0.64%	C209	0.64%		
A210	0.76%	B210	0.76%	C210	0.76%	E201	0.78%
A211	0.79%	B211	0.79%	C211	0.79%	E202	0.79%
A212	0.64%	B212	0.78%	C212	0.79%	E203	0.76%
						E204	0.76%
A301	0.64%	B301	0.79%	C301	0.79%	E205	0.78%
A302	0.79%	B302	0.78%	C302	0.79%	E206	0.79%
A303	0.76%	B303	0.64%	C303	0.76%		
A304	0.64%	B304	0.76%	C304	0.64%	F101	0.79%
A305	0.64%	B305	0.76%	C305	0.64%	F102	0.64%
A306	0.76%	B306	0.64%	C306	0.76%	F103	0.79%
A307	0.76%	B307	0.76%	C307	0.76%	F104	0.76%
A308	0.64%	B308	0.64%	C308	0.64%	F105	0.79%
A309	0.64%	B309	0.64%	C309	0.64%		
A310	0.76%	B310	0.76%	C310	0.76%		
A311	0.79%	B311	0.79%	C311	0.79%		
A312	0.64%	B312	0.78%	C312	0.79%		

*Please Note: Percentages may vary slightly due to rounding.

EXHIBIT "E"
MAINTENANCE LIST

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

COMPONENT(S)	OWNER	ASSOC.
Air Conditioning System - Individual Unit	X	
Appliances - Built-in / Free Standing - Individual Unit	X	
Carport / Driveway / Parking Space		
Concrete and Asphalt Surfaces		X
Caulking - Exterior / Common Area		X
Caulking - Interior - Individual Unit	X	
Ceiling - Painting - Repair - Individual Unit	X	
Ceiling - Structure		X
Common Area Improvements		X
Doorbell - Individual Unit	X	
Doors - Entry - Door, Frame, Weather Stripping, Locks, Hardware - Individual Unit	X	
Doors - Entry - Painting - Exterior Surface - Individual Unit		X
Doors - Entry - Painting - Interior Surface - Individual Unit	X	
Doors - Screen / Storm / Security - Individual Unit	X	
Doors - Sliding Glass - Door, Frame and Tracks, Flashing, Waterproofing, Weather Stripping, Locks, Hardware - Individual Unit	X	
Drainage Systems (e.g. ditches, catch basins)		X
Drains - Bathtubs, Showers, Sinks	X	
Drains - Curb and Yard		X
Dryer Vents - Common Area		X
Dryer Vents - Individual Unit	X	
Drywall - Interior - Repair - Replace - Individual Unit*	X	
Drywall - Common Area		X

COMPONENT(S)	OWNER	1588 ASSOC.
Electrical Panel / Circuit Breaker, Switches, Sockets, Wall Plates - Individual Unit	X	
Emergency Call System		X
Exhaust Fans - Individual Unit	X	
Exterior Building Surfaces		X
Exterior Hose Bibs, Faucets, Handles, Washers		X
Fences - Access Gates - Common Area		X
Fire / Sprinkler System		X
Fireplace - Chimney Flue, Interior Cleaning, Fire Brick (fire box), Mantlepiece, Trim and Facing - Individual Unit	X	
Fireplace - Chimney - Exterior and Spark Arrestor		X
Fireplace - Common Area		X
Floor Coverings - Carpet, Vinyl, Tile, Etc. - Individual Unit	X	
Heating - Systems Serving Multiple Units / Common Area		X
Heating - Systems Serving Single Individual Units	X	
Gate Door Openers - Individual Remote Controls	X	
Garbage Disposal - Individual Unit	X	
Gas Lines - Below Ground		X
Glass Cleaning - Exterior / Common Area		X
Glass Cleaning - Interior - Individual Unit	X	
Glass - Window, Door, Balcony Panel - Repair - Replacement - Individual Unit	X	
Gutters - Downspouts		X
Insulation - Individual Unit*	X	
Landscaping - Exterior / Common Area		X
Lighting Fixtures - Exterior / Common Areas		X
Lighting Fixtures - Individual Unit	X	
Owner Installed Improvement	X	
Painting - Interior - Individual Unit	X	
Patio / Balcony Deck Membranes / Waterproofing		X
Patio / Balcony - Painting (inside / outside surfaces / deck railings)		X
Plumbing Fixtures and Components - Individual Unit (toilets / tubs / sinks/ faucets, etc.)	X	

COMPONENT(S)	OWNER	ASSOC.
Plumbing Lines - Individual Unit - Not located behind or within walls, floors or ceilings	X	
Plumbing Lines - Individual Unit - Located within floors, behind or within walls or ceilings, and in Common Area		X
Roof Flashing, Vents, Shingles, Tiles & Other Roofing Components		X
Roof - Owner Installed Improvements (i.e. skylights, etc.)	X	
Sewer Backups	X	
Sewer Lines - Common Use		X
Sewer Lines - Single Use	X	
Sidewalks - Common Areas, Entry		X
Siding - Trim - Wood - Exterior - Maintenance, Painting, Replacement		X
Spraying for Household Pests (ants, fleas, etc.)	X	
Spraying for Landscaping Pests		X
Ventilation Ducts - Individual Unit	X	
Walls - Interior - Painting, Paneling, Tile, Wallpaper, Etc. - Individual Unit	X	
Walls - Structural Portion		X
Walls - Exterior Surfaces / Common Area		X
Water Heating Systems and Devices		X
Water Lines - Individual Unit - Not located behind or within walls, floors or ceilings	X	
Water Lines - Located within floors, behind or within walls or ceilings, and in Common Area		X
Water Softeners - Individual Unit	X	
Window Frames, Flashing and Waterproofing, Locks, Hardware, Screens - Individual Unit	X	
Wiring - Cable TV / Telephone - Serving Individual Unit	X	
Wiring - Cable TV / Telephone - Serving Multiple Units - Common Area		X
Wiring - Electrical - From Breaker to Interior - Individual Unit	X	
Wiring - Electrical - From Outside or Common Area To Breaker		X

*In the event of damage/destruction of Project and rebuilding by Association, these items to be replaced by Association.

DOC # 2004-0625531

JUL 02, 2004 3:57 PM

Handwritten initials/signature

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Chateau Lake San Marcos HOA
c/o Association Office
1502 Circa Del Lago
San Marcos, California 92069

26885

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 20.00



(Above Space for Recorder's Use)

**2004 AMENDMENT
TO THE
FIRST AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION**
A Residential Senior Condominium Development

NOTICE
(Government Code §12956.1)

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

2004 AMENDMENT
TO THE
FIRST AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
CHATEAU LAKE SAN MARCOS HOMEOWNERS ASSOCIATION
A Residential Senior Condominium Development

This document amends the First Amended and Restated Declaration of Restrictions for Chateau Lake San Marcos Homeowners Association, as amended from time to time ("Declaration"). This Amendment is made on the day and year set forth below, by Chateau Lake San Marcos Homeowners Association, a California nonprofit mutual benefit corporation (hereafter "Association"), with reference to the following

RECITALS:

A. This document is recorded for the purpose of amending that certain Declaration which was recorded in the Office of the County Recorder of San Diego County, California on April 3, 1996 as Document Number 1996-0166479.

B. Association is an "Association," as defined in Civil Code Section 1351(a), that was established to manage that certain common interest development commonly known as Lake San Marcos that is located in the area known as Lake San Marcos, San Diego County, California.

C. The legal description of the property that has been subjected to the terms of the Declaration (hereafter "Property") is:

Lots 1 through 8, inclusive, of COUNTY OF SAN DIEGO TRACT NO. 4471, in the County of San Diego, State of California, according to Map thereof No. 11262, filed in the Office of the County Recorder of San Diego County, June 20, 1985.

D. The Owners and Members of the Association wish to modify the Declaration by adding a new Section 5.13 to Article 5 of the Declaration.

E. This amendment has been adopted under the provisions of Article 14, Section 14.1 of the Declaration which requires amendments to be approved by the affirmative vote of Owners representing not less than fifty-one percent (51%) of the voting power of the Association.

F. Section 14.1 provides that an amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

G. The Association has designated the President and Secretary to certify the approval of amendments, and the President's and Secretary's certification is attached hereto as Exhibit A.

NOW THEREFORE, the Owners and Members hereby amend Article 5 by adding a new Section 5.13 to the Declaration, the text of which is set forth below. Language in *[bracketed italics]* is for information only and is not part of the language of the amendment.

[Article 5]

5.13 *Non-Smoking Facility.* Smoking is prohibited in all condominium units, Care Center rooms, exclusive-use common areas and all indoor and outdoor common areas, provided, however, that those who are currently smokers are not dispossessed and may continue to smoke in their own units and exclusive-use common areas (balconies, patios).

This completes the text of this amendment. It is intended that the terms of this amendment shall control to the extent any other provisions of the Declaration may conflict with it. This amendment shall take effect immediately upon recording.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the Declaration on June 28 + June 29, 2004 at San Marcos, California.

CHATEAU LAKE, SAN MARCOS HOMEOWNERS ASSOCIATION
a California nonprofit mutual benefit corporation

By: Adelaide Coulter, President
Adelaide Coulter, President

By: Helen Polatchek
Helen Polatchek, Secretary

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[Acknowledgments Follow on the Next Page]

Exhibit A**CERTIFICATION OF PRESIDENT AND SECRETARY
AS TO APPROVAL OF AMENDMENTS**

We, Adelaide Coulter and Helen Polatchek, declare and state as follows:

1. We certify that we are the President and Secretary, respectively, of Chateau Lake San Marcos Homeowners Association, a California nonprofit mutual benefit corporation (hereafter "Association").
2. This certification is executed, according to the provisions contained in California Civil Code Section 1355, to certify that the amendment requirements of the Declaration have been met.
3. We certify that the voting power of the Association is one hundred thirty seven (137) votes, one for each Condominium Unit in the Property.
4. We certify that, based on the facts recited in Paragraph 3 above and according to Article 14, Section 14.1 of the Declaration, amendments must be approved by the affirmative vote of Owners representing not less than fifty-one percent (51%) of the voting power of the Association. Thus, at least seventy (70) affirmative votes are needed to amend the Declaration.
5. We certify that the amendment was approved on April 14, 2004, based on an affirmative vote by 80 members versus a negative vote by 30 members.
6. Since these totals reflect approval by at least seventy (70) affirmative votes, we certify that the amendment was approved.

On behalf of the Association, we declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct. Executed on June 28th June 29, 2004 at San Marcos, California.

By: Adelaide Coulter
Adelaide Coulter, President

By: Helen Polatchek
Helen Polatchek, Secretary

State of California)
)
County of San Diego)

On June 28, 2004, before me, Teresa I. Goode, a
Notary Public, personally appeared Helen Polatchek,

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

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

WITNESS my hand and official seal.

Teresa I. Goode

Notary Public



State of California)
)
County of San Diego)

On June 29, 2004, before me, Teresa I. Goode, a
Notary Public, personally appeared Adelaide Coulter,

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

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

WITNESS my hand and official seal.

Teresa I. Goode

Notary Public

