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**SANTA CLARA COUNTY RECORDER**

**RECORDING REQUESTED BY:  
AND  
WHEN RECORDED MAIL TO:  
STRAWBERRY SQUARE  
HOMEOWNER'S ASSOCIATION  
c/o Berding & Weil LLP  
3240 Stone Valley Road West  
Alamo, CA 94507**

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## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF STRAWBERRY SQUARE

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

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### RECITALS OF BACKGROUND FACTS; DECLARATIONS

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- A. The Association is the successor in interest to Lincoln Property Company No. 37 Inc., a California corporation, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions recorded on July 14, 1971, in Book 9417, Pages 58 through 68, as Instrument/Series No. 4048307, Official Records of Santa Clara County, State of California (referred to in this document as the "1971 Declaration").
- B. Amendments and declarations of annexation to the 1971 Declaration were recorded on various dates as set forth in Exhibit A.
- C. The 1971 Declaration as amended establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the City of San Jose, County of Santa Clara, State of California, and more particularly described as follows:

Tract No. 4998, Strawberry Square Unit No. 1, as shown on the map thereof filed of record on June 15, 1971 in Book 284 of Maps at pages 49 through 51;

Tract No. 5046, Strawberry Square Unit No. 2, as shown on the map thereof filed of record on October 21, 1971 in Book 291 of Maps at Pages 49 through 51, and

Tract No. 5231, Strawberry Square Unit No. 3, as shown on the map thereof filed of record on October

25, 1973 in Book 331 of Maps at Pages 47 through 49,  
all in the records of the County Recorder of Santa Clara County, California,

- D. The Members, constituting at least seventy-five percent (75%) of the Members of the Association, desire to amend, modify, and otherwise change the 1971 Declaration as amended pursuant to Article XII, Section 3 thereof, and do hereby declare that the 1971 Declaration as amended be, and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Strawberry Square.
- E. IT IS HEREBY DECLARED that all of the real property described in Recital Paragraph C, above, constitutes a planned development within the meaning of section 1351(k) of the California *Civil Code*.
- F. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph C, above, is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 1354, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.

## ARTICLE 1            DEFINITIONS

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- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including but not limited to interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.

- 1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 9.7.
- 1.3 Architectural Committee. "Architectural Committee" shall mean the Committee appointed pursuant to Article 8 ("Architectural Approval").
- 1.4 Articles. "Articles" shall mean the Amended Articles of Incorporation of Strawberry Square Homeowner's Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.6 Association. "Association" shall mean Strawberry Square Homeowner's Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 Bylaws. "Bylaws" shall mean the Amended Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.9 City. "City" shall mean the City of San Jose.
- 1.10 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.11 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development, comprising Lots 121 and 122 of Tract 4998, Lot 241 of Tract 5046, and Lot 354 of Tract 5231 as shown on the Subdivision Maps together with all improvements thereon including but not limited to the private streets.
- 1.12 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.13 Corporations Code. "*Corporations Code*" shall mean the California Corporations Code as amended from time to time.

- 1.14 County. "County" shall mean the County of Santa Clara.
- 1.15 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Strawberry Square, recorded in the Office of the County Recorder of Santa Clara County, California, and any duly recorded amendments thereof.
- 1.16 Development. "Development" shall mean all the real property described in this Declaration comprising the Strawberry Square planned development and any additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.17 Dwelling. "Dwelling" shall mean a structure designed for human residential use and occupancy which is located upon a Lot. The term "Dwelling" shall include all accessory structures such as any garage, carport, porch, stoop, deck, balcony, entry steps, patio, etc., serving the primary residential structure.
- 1.18 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 9.11.
- 1.19 First Mortgage/First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over any other Mortgage. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.21 Lot. "Lot" shall mean any of Lots 1 through 120 of Tract 4998, Lots 123 through 240 of Tract 5046, and Lots 242 through 353 of Tract 5231, as shown on the Subdivision Maps. There are 350 Lots in the Development.
- 1.22 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.23 Member. "Member" shall mean an Owner.
- 1.24 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 13 ("Enforcement; Notice; Hearings"), the Board has found the

Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 1363(h).

- 1.25 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.26 Mortgagee. "Mortgagee" shall mean a beneficiary under a Mortgage.
- 1.27 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.28 Party Wall. "Party Wall" shall mean each wall built as part of the original construction of the Dwellings within the Development and placed on or approximately on the boundary line between the Lots.
- 1.29 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 9.10.
- 1.30 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.31 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.32 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner.
- 1.33 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Development, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Development, enforcement of the Governing Documents, and any other matter which is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 1357.100 *et seq.*

- 1.34 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 9.9.
- 1.35 Subdivision Map. "Subdivision Map" shall mean any of the following:  
Map of Tract No. 4998, Strawberry Square Unit No. 1, filed of record on June 15, 1971 in Book 284 of Maps at pages 49 through 51;  
Map of Tract No. 5046, Strawberry Square Unit No. 2, filed of record on October 21, 1971 in Book 291 of Maps at Pages 49 through 51, and  
Map of Tract No. 5231, Strawberry Square Unit No. 3, filed of record on October 25, 1973 in Book 331 of Maps at Pages 47 through 49,  
all in the records of the County Recorder of Santa Clara County, California.
- 1.36 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

## **ARTICLE 2                    HOMEOWNERS ASSOCIATION**

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- 2.1 Management and Operation; Bylaws. The Association is an "association" as defined in *Civil Code* section 1351(a) and as such shall have the power and the authority to manage and operate the Development in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Association as a nonprofit mutual benefit corporation are set forth in the Bylaws.
- 2.2 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Lot ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 2.3 Voting. Only Members in Good Standing shall be entitled to vote and only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.



Documents. Only Residents of the Development and their accompanied guests shall be entitled to use the Common Area facilities.

- 4.2 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 4.2 to limit the right of use and enjoyment of the Common Area to Residents of the Development and their accompanied guests. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 4.3 Notice Regarding Household Members, Tenants, or Contract Purchasers. Each Owner shall notify the Board or the Association's manager of the names of any tenants or any Contract Purchasers occupying such Owner's Lot. If requested by the Board, each Owner, tenant, or Contract Purchaser shall also notify the Board or the Association's manager of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship each such person bears to such Owner, tenant, or Contract Purchaser.
- 4.4 Common Area Construction. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 4.5 Mechanic's Lien against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a



hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

- 4.6 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s), there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Article 4.
- 4.7 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:
- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
  - (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
  - (c) The right of the Board to suspend an Owner's right to use the recreational facilities as provided in Section 13.8 ("Imposing Sanctions");
  - (d) The right of the Board, as set forth in Section 3.5 ("Sale or Mortgage of Association Real Property"), to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;
  - (e) The right of the Board, as set forth in Section 4.10 ("Utility Easements"), to grant and transfer utility easements and rights of

way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;

- (f) The right of the Board, as set forth in Section 4.11 ("Power to Grant Easements and Licenses"), to grant easements, licenses, and rights of way upon the Common Area; and
- (g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

4.8 Easements of Encroachment and Drainage. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots (i) due to the overhang of eaves of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of the Declaration) to a distance of not more than thirty (30) inches, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point or (ii) due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of the Declaration) to a distance of not more than one foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; *provided, however*, that in no event shall an easement for encroachment exist in favor of an Owner, a Resident, or the Association if such encroachment occurred due to willful unauthorized conduct on the part of such person. In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.

4.9 Easements for Maintenance of Party Walls. "Party Wall" shall mean each wall built as part of the original construction of the Dwellings within the Development and placed on or approximately on the boundary line between the Lots. There shall be reciprocal appurtenance easements for the maintenance and repair of a Party Wall or Walls.

4.10 Utility and Drainage Easements. There are reserved and there shall exist easements over and under the Development or any portion thereof for the

purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, drainage, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, together with the right of ingress and egress thereto and therefrom and the right and privilege of doing whatever may be necessary in, under, and upon the property for the carrying out of any of the purposes for which the said easements are hereby reserved. the foregoing shall include the right to grant and transfer the same and each purchaser, in accepting a deed to a Lot, expressly consents thereto; *provided, however*, that no such easement or right of way may be granted or transferred if it would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

- 4.11 Board Power to Grant Easements and Licenses. Notwithstanding any other provisions of the Governing Documents, the Board shall have the power in its discretion without approval vote of the Members to grant and convey easements, licenses for use, and rights of way in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association; *provided, however*, that approval of a majority of the Total Voting Power of the Association shall be required to grant an exclusive easement over Common Area to any Member, other than any grant or conveyance to a Member described in *Civil Code* section 1363.07(a)(1),(2), and (3).

## ARTICLE 5 PARTY WALLS

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- 5.1 General Rules of Law to Apply. Unless and to the extent they conflict with the provisions of the Declaration, the general rules of law regarding Party Walls and Party Fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto, as follows.
- 5.2 Sharing of Maintenance, Repair, and Replacement Costs. The cost of maintenance, repair, and replacement of a Party Wall shall be shared by the Owners pursuant to the terms of any written agreement entered into between the Owners thereof for that purpose. In the absence of such a written agreement, such costs shall be shared by the Owners who make use of the wall or fence in proportion to such use; provided that if a Party

Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- 5.3 Weatherproofing. Notwithstanding any other provision of this Article 5, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 5.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article 5 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- 5.5 Party Wall Disputes. Party Walls are not Common Area and are not the responsibility of the Association. Any dispute concerning a Party Wall or otherwise under the provisions of this Article 5, shall be subject to the alternative dispute resolution provisions in Section 13.17 ("Alternative Dispute Resolution Before Initiating Lawsuit").

## **ARTICLE 6                      USE RESTRICTIONS**

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- 6.1 Residential Use. Except to the extent permitted in Section 6.3 ("Restriction on Businesses"), Lots shall be occupied and used for single family residential purposes only.
- 6.2 Rental of Lots. Renting or leasing of any Lot shall be subject to the provisions of Article 7 ("Renting or Leasing").
- 6.3 Restriction on Businesses.
- 6.3.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) such professional and administrative occupations as may be permitted by applicable governmental ordinances and that have no external evidence of such activity, cause no significant increase in traffic within the Development, comply with all applicable governmental ordinances, and are merely incidental to the use of the Lot for residential purposes and (ii) certain facilities to the extent specifically authorized by the California *Health & Safety Code*.

- 6.3.2 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Development, or whose tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents, including but not limited to the restriction on business contained in this Section 6.3. Any amounts owed pursuant to this Section 6.3.2 may be assessed as a Reimbursement Assessment.
- 6.4 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with Residents' use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Dwellings. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Dwelling.
- 6.5 Use of Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area. Each Owner shall avoid causing any damage to the Common Area.
- 6.6 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation.

- 6.7 Requirement of Architectural Approval. As addressed in Article 8 ("Architectural Approval"), construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior architectural approval.
- 6.8 Sports Apparatus. No fixed or portable sports apparatus (e.g., basketball standards, portable basketball standards, skateboard ramps, etc.) shall be placed upon or attached to any Lot or building without prior written approval of the Architectural Committee.
- 6.9 Outside Drying and Laundering. Outside clotheslines shall be permitted only within the patios area of a Lot and must be at least three inches below the top of the fence. No other outside clothes washing, drying, or airing facilities shall be maintained in the Development.
- 6.10 Satellite Dishes and Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained any where in the Development, except (i) those expressly approved by the Board or the Architectural Committee, (ii) those initially installed during the approved construction of the buildings, or (iii) as specifically permitted by law. It is the intention of this Section 6.10 to restrict outside masts, towers, poles, antennas, and satellite receivers or transmitters in the Development to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.
- 6.11 Animals.
- 6.11.1 Limitation on Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A reasonable number of common domestic household pets may be kept on each Lot. Unless otherwise provided in the Rules, a "reasonable number" of all dogs, cats, and birds kept in a Lot shall be deemed to be two (2). While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it and all other pets must be carried, caged, or leashed and held by a responsible person capable of controlling the animal. No animal may be left chained or otherwise tethered in front of a Dwelling.
- 6.11.2 Outside Structures for Animals. Outside structures for the care, housing, or confinement of any animal shall be permitted only within the patios area of a Lot.
- 6.11.3 Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any

waste introduced to any portion of the Development by such pet.

6.11.4 Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, invitees, or guests. To the fullest extent permitted by law, each Owner agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, tenants, invitees, or guests including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 6.11. Any amounts owed pursuant to this Section 6.11.4 may be assessed as a Reimbursement Assessment.

6.11.5 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 6.11. The Board shall have the right to prohibit the keeping of any animal which, after the responsible Owner or Resident has an opportunity for a hearing called by the Board pursuant to Section 13.12 ("Hearings Called by the Board"), is found by the Board to be a nuisance.

6.12 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in containers provided for that purpose by the garbage collection service. Such containers shall be located in an appropriate area upon each Lot and concealed from view. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Lot or elsewhere in the Development, except in such containers.

6.13 Signs, Banners, Flags. Only the following types of signs, posters, banners, or flags shall be displayed to the public view from any portion of the Development:

(a) Signs required by legal proceedings;

- (b) Noncommercial signs or posters no larger than 9 square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed upon a Lot or Dwelling, and limited to the fullest extent permitted by *Civil Code* section 1353.6;
- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and Architectural Rules, if any, and reasonably located on a Lot advertising a Lot for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States, subject to any city or county restrictions as to size and as to time, place, and manner of display;
- (f) A single identification sign which has been approved by the Architectural Committee located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (g) Signs approved by the Board as required for traffic control and regulation of streets or open areas within the Development; and
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, including signs located at or near any entrance to the Development identifying the Development.

#### 6.14 Vehicles and Parking.

6.14.1 Prohibited Vehicles. Prohibited vehicles may not be brought into the Development. The following types of vehicles are prohibited: (i) dilapidated, inoperable, or unregistered vehicles, (ii) unreasonably noisy vehicles, vehicles that emit foul-smelling or offensive exhaust fumes, and (iii) mobile homes.

6.14.2 Restricted Vehicles. The following types of vehicles are restricted: (i) trailers, (ii) campers, motor homes, recreational vehicles, (iii) boats, and (iv) commercial vehicles. Restricted vehicles shall not be kept or parked within the Development other than inside a garage or carport or in the designated recreational vehicle parking area, except that commercial vehicles of tradesmen or service providers shall be permitted to park within the Development while servicing a Lot or Common Area. No commercial vehicle shall be parked overnight anywhere within the Development. The term "commercial



vehicle" shall include any vehicle used for or licensed for business use, but shall not include any two axle passenger vehicle or pickup truck no larger than one and one-half (1-1/2) ton capacity that is used by a Resident for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board and said vehicle shall not be parked within the Development other than inside a garage or carport.

6.14.3 Vehicle Repairs. No motor vehicles or boats shall be constructed, reconstructed, or repaired within the Development (other than minor emergency repairs to the extent necessary to move the vehicle to a repair facility).

6.14.4 Parking. Vehicles shall not be parked anywhere within the Development except wholly within a garage, a carport, or a designated parking area. **Parking is not allowed at any time in designated fire lanes.** No vehicle shall be parked continuously for longer than seventy-two (72) hours other than within a garage or carport. No commercial vehicle shall be parked overnight anywhere within the Development.

6.14.5 Parking Enforcement. The provisions of this Section 6.14 apply to all vehicles within the Development, including vehicles of guests and invitees. In addition to the provisions of this Section 6.14, the Board shall have the power and authority to adopt, promulgate, and enforce Parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Subject to the provisions of applicable law, including Vehicle Code sections 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household member, Contract Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.

6.15 Garages. Each garage door shall remain closed except during ingress or egress or when necessary to provide ventilation for individuals working in the garage area.

- 6.16 Outbuildings. In no event shall any outbuilding, shed, garage or similar structure be used for human occupancy, either temporarily or permanently.

## ARTICLE 7                    RENTING OR LEASING

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- 7.1 Requirements for Renting. An Owner renting his or her Lot shall:
- (a) do so pursuant to a written lease or rental agreement. The lease or rental agreement shall expressly provide that (i) its terms are subject to all of the provisions of the Governing Documents, (ii) failure of the tenant, members of the tenant's household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a default under the terms of such lease or rental agreement; and (iii) in the event of any such default, the Association shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third party beneficiary under such lease or rental agreement, as provided in Section 7.5 ("Association as Third Party Beneficiary");
  - (b) file a copy of the signed lease or rental agreement, including the name of each tenant and of the members of the tenant's household, with the Board. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board; and
  - (c) provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto.
- 7.2 No Transient Rentals. With the exception of a lender in possession of a Lot following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his or her Lot for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental where the occupant of a Dwelling is provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen and towels, laundry service, and bellboy services.
- 7.3 Rental of Entire Lot. No Owner shall rent or lease less than the entire Lot. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No garage, accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the principal

building on the Lot. This Section 7.3 is not intended to prohibit a Resident Owner from sharing his or her Lot or Dwelling with a roommate or other person(s) with whom the Owner maintains a common household.

- 7.4 Implementation. Upon request from the Board after this Declaration is recorded, each Owner then renting or leasing a Lot shall provide to the Board such information as the Board may reasonably require to implement the provisions of this Article 7 including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease and/or a copy of the signed lease. Any rental or leasing of a Lot commencing after this Declaration is recorded and the renewal of a tenancy in effect on the date this Declaration is recorded shall be pursuant to a written lease or rental agreement in accordance with Section 7.1 ("Requirements for Renting").
- 7.5 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 7.1 ("Requirements for Renting"), and whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Lot subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, tenant's invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to the rights granted pursuant to Section 9.19 ("Assignment of Rents as Security for Payment"), or under the law. This Section 7.5 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded.
- 7.6 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Dwellings, Lots, and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Lot upon the Development, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by

the Association of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 7.6 may be assessed as a Reimbursement Assessment.

## ARTICLE 8                    ARCHITECTURAL APPROVAL

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- 8.1 Architectural Approval Required. No building, fence, hedge or similar barrier, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind, no outdoor lighting, no mast, pole, tower, antenna, receiver, or transmitter to the extent restricted by Section 6.10 ("Satellite Dishes and Antennas"), and no landscaping shall be commenced, erected, painted, or installed within the Development, nor shall any exterior addition or change or alteration be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Architectural Committee. The foregoing shall not apply to improvements made or constructed by or on behalf of the Association.
- 8.2 Preliminary Consultation with Architectural Committee Prior to Submitting Application. Any Owner considering performing any work requiring the prior approval of the Architectural Committee may apply to the Committee for preliminary consultation by submitting preliminary plans or drawings of the contemplated work in accordance with the Architectural Rules. The purpose of the preliminary consultation procedure is to allow an Owner considering making substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for actual approval. Within forty-five (45) days after receiving a request for a preliminary consultation, the Committee shall consider the preliminary information submitted and shall respond in writing to the Owner. The Committee's response shall give the requesting Owner such direction concerning the form and substance of an approval application for the contemplated work as the Committee deems proper or desirable for the guidance of the Owner. The issuance of a preliminary consultation response by the Committee shall not under any circumstances be deemed approval of any contemplated work; nor, once an Owner submits a request for approval, shall it preclude the Committee requesting additional information about the proposed work based on the actual application.
- 8.3 Establishment and Composition of Committee. The Board shall appoint an Architectural Committee at least one of whom shall be a Director. The Committee members shall serve at the pleasure of the Board. If at any time there shall not be a duly-constituted Architectural Committee, the

Board shall exercise the functions of the Architectural Committee in accordance with the terms of this Article 8.

- 8.4 Duties. It shall be the duty of the Committee to consider and act upon proposals or plans submitted to it pursuant to the terms of this Declaration and to perform such other duties as may be delegated to it by the Board.
- 8.5 Meetings, Minutes, Reimbursement. The Committee shall meet as necessary to properly perform its duties hereunder. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Committee function.
- 8.6 Architectural Rules. Subject to the requirements of *Civil Code* section 1357.100 *et seq.*, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for Committee review and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; *provided, however*, that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration. Any Architectural Rules concerning the installation or repair of a roof shall comply with applicable law including *Civil Code* section 1353.7, if it applies.
- 8.7 Written Request for Committee Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 8, shall submit to the Committee a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Committee may require.
- 8.8 Fees. The Committee may charge a reasonable fee or fees for review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 8.9 Decisions To Be Made in Good Faith. The Committee's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Committee will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Committee shall make its decisions from the perspective of the interest of the Development as a whole in the fostering of the coherence, value, attractiveness and aesthetic

compatibility of all architectural designs and features in the Development, after consideration of such factors the Committee reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Committee. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee. The Committee shall grant the requested approval only if:

- (a) The Owner has submitted a complete application;
- (b) The Committee finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Committee;
- (c) The Committee finds that the proposed work will, if approved, be consistent and compatible with the architectural and aesthetic standards prevailing within the Development and will be in harmony with the external design and appearance of other existing structures and improvements within the Development, and as to location with respect to topography and finished grade elevations; and
- (d) The Committee determines that the proposed work would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship and materials.

8.10 Drainage Easements; Fences or Hedges. No structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the direction of flow of drainage facilities anywhere within the Development. No fence, hedge, wall, or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed, maintained or permitted to remain on any Lot, except for any wall or fence that was installed as part of the original construction.

8.11 Decisions In Writing. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Committee within forty-five (45) days from the date of submission of a complete application to the Committee. If a request is rejected, the decision shall include an explanation of the Committee's decision and a notice describing the Owner's right to request consideration by the Board.

8.12 Reconsideration by Board. If the Committee rejects a request for approval, the Owner shall be entitled to reconsideration of the request by the Board of Directors at an open meeting, pursuant to the procedures set forth in Section 13.13 ("Owner Request for Hearing").

- 8.13 Variances. The Board (but not the Architectural Committee) may grant reasonable variances or adjustments in order to overcome practical difficulties due to topography or other conditions unique to a particular Lot and to prevent unnecessary hardships in the application of the provisions of the Declaration; *provided, however*, that such variance or adjustment is in conformity with the intent and purposes of the Declaration and *provided further* that no such variance or adjustment shall constitute a waiver of such provision with respect to any future application whether for the same Lot or any other Lot.
- 8.14 Further Appeal by Internal Dispute Resolution. If the Committee shall fail to act on a request for approval within the time specified in Section 8.11, or if the Board shall fail to reconsider the Owner's request in a timely fashion pursuant to Section 8.12, the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 1363.830, discussed in Section 13.16 ("Internal Dispute Resolution").
- 8.15 Failure to Obtain Required Approval. If any work that requires prior approval pursuant to this Article 8 is performed without such approval having been obtained, the Board shall be entitled to proceed in accordance with the provisions of Section 8.19 ("Notice of Non-Conformity") as though the Board had given written notice of non-conformity with approved plans.
- 8.16 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. The Board shall not grant an extension of time for commencement of the work if the Board finds that there has been a material change in the circumstances upon which the original approval was granted.
- 8.17 Completion. The Owner shall, in any event, complete all approved work within one year after commencement thereof; except that in the case of reconstruction after substantially total destruction of the improvements on a Lot, the construction or reconstruction shall be completed within eighteen months after commencement thereof. In the case of projects under construction when this Declaration is recorded, the construction or reconstruction shall be completed by the completion date specified in the project approval or, if no such completion date was specified, within one (1) year (or in the case of reconstruction after substantially total

destruction of the improvements on a Lot within 18 months), after the date of recordation. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents, provided the Owner notifies the Association of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 8.17, the Committee shall notify the Board of such failure, and the Board shall be entitled to proceed in accordance with the provisions of Section 8.19, (Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.

- 8.18 Notice of Completion; Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 8, the Owner shall give written notice of completion to the Committee. Within sixty (60) days after receiving notice of completion from the Owner, the Committee or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval. If the Committee fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval. If the Owner fails to give notice of completion, the Board shall be entitled to proceed in accordance with the provisions of Section 8.19, (Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.
- 8.19 Notice of Non-Conformity. If the Committee finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period, specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Committee or such longer time as the Committee may designate in the notice.
- 8.20 Failure to Remedy Non-Conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice from the Committee, the Committee shall notify the Board in writing of such failure. Pursuant to the procedures set forth in Section 13.12 ("Hearings Called by the Board"), the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.





Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

9.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

9.1.2 Assessments Are a Personal Obligation. Assessments levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

9.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Lot.

9.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Lot, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder.

9.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

- 9.2.1 Lien is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.
- 9.2.2 Priority of Liens. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Lot that become due and payable subsequent to the lien being foreclosed upon.
- 9.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Owners, or for the enforcement of the Governing Documents.
- 9.4 Funds to Be Held in Association's Name. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION OPERATING ACCOUNT and STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of Indebtedness").
- 9.5 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

- 9.6 Authority of the Board to Levy Assessments. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.
- 9.7 Annual Assessment.
- 9.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Annual Assessment.
- 9.7.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Lots by dividing the amount by the number of Lots within the Development. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.
- 9.7.3 Notice of Annual Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Annual Assessment allocated to his or her Lot, except that if there is an increase in the Annual Assessment over the previous year, in compliance with *Civil Code* section 1366(d) the notice shall be mailed by first class mail to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Annual Assessment.
- 9.7.4 Application of Surplus Funds. If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, such excess shall automatically, without the need for a Member vote, be applied against the subsequent tax year's Member Assessments as provided in

Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.

9.8 Permitted Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 1366(b), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

9.9 Special Assessments.

9.9.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

9.9.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366(b), in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 1366(b), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

9.9.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

9.9.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 1366(d) notice shall be sent by first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

9.10 Reimbursement Assessments. The Board may levy a Reimbursement Assessment against an Owner and his or her Lot:

- (a) to reimburse the Association for costs incurred to maintain, repair, or replace property (including property within a Lot) when such damage is due to the act or neglect of such Owner, his or her Resident Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;
- (b) if the failure of such Owner, his or her Resident Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such person or the Lot into compliance;
- (c) to reimburse the Association for any costs of collecting from an Owner any amount the Owner is obligated to pay the Association.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorneys' fees, incurred by the Association to enforce Section 6.3 ("Restriction on Businesses"), Section 6.11 ("Animals"), Section 7.5 ("Association As Third Party Beneficiary"), Section 7.6 ("Indemnification Regarding Tenant's Actions"), Section 9.19 ("Assignment of Rents as Security for Payment"), and Section 13.6 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Association as a Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Association when levied.

9.11 Enforcement Assessments. Subject to the requirements set forth in Section 13.8 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

- 9.12 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 9.13 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 9.14 Bad Checks. An Owner who writes a check to the Association on insufficient funds shall be charged a service fee in the amount permitted by *Civil Code* section 1719 and may be liable for damages to the Association in an amount equal to three times the amounts of the bad check, as provided by statute.
- 9.15 Delinquent Assessments. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 1366(e), shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges.
- 9.16 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 1367.1(e), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 9.16.1 Pre-Lien Notice. At least thirty (30) days prior to recording a Notice of Delinquent Assessment against a Lot to collect a debt that is past due, the Association shall provide written notice to the Owner(s) of the Lot, as required by *Civil Code* section 1367.1(a) ("Pre-Lien Notice").

- 9.16.2 Prior to Recording a Lien. Prior to recording a Notice of Delinquent Assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration) to the extent required pursuant to *Civil Code* section 1367.1(c)(1) and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 1367.1(c)(2).
- 9.16.3 Owner's Right To Discuss Payment Plan. To the extent provided in *Civil Code* section 1367.1(c)(3), an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-Lien Notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-Lien Notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one or more Board members to meet with the Owner.
- 9.16.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-Lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. No later than ten (10) days after recordation, a copy of the Notice of Delinquent Assessment shall be mailed by certified mail in compliance with *Civil Code* section 1367.1(d) to every person whose name is shown as an Owner of the Lot in the Association records or in such manner and to such persons as may be required by applicable law.
- 9.16.5 Delinquent Assessments of Less than \$1,800. To the extent provided in *Civil Code* section 1367.4, delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 1367.4(b)(1) or recording a lien as provided in *Civil Code* section 1367.4(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) to the extent required by *Civil Code* section 1367.4(b)(2).



- 9.16.6 Initiating Foreclosure. As provided in *Civil Code* section 1367.1(g), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 9 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment. To the extent required pursuant to *Civil Code* section 1367.4(e), the Association shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration). To the extent required by *Civil Code* section 1367.4(c)(2), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.
- 9.16.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.
- 9.16.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 1367.4(c)(3), the Association shall provide written notice of initiating foreclosure to the record Owner of the Lot, including notice by personal service to any Resident Owner.
- 9.17 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (section 2920 and following) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale.
- 9.18 Right of Redemption. To the extent provided pursuant to *Civil Code* section 1367.4(c)(4), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.
- 9.19 Assignment of Rents as Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and

authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in performance of any agreement under the Governing Documents including but not limited to those set forth in Article 7 ("Renting or Leasing"), to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may at any time, upon ten days written notice to such Owner, then (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 9.19 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first mortgage on any Lot, or any part thereof, to do the same or similar acts.

- 9.20 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.
- 9.21 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 9.22 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; *provided, however,* that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Lot; and *provided, further,* that such subordination

shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

9.23 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.

9.24 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;
- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; *provided, however,* that such exemption shall apply only during the period in which the Association is record owner of such Lot; and
- (c) All Common Area.

## **ARTICLE 10            MAINTENANCE OF PROPERTY**

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10.1 Association Responsibility for Common Area, Generally. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private streets, parking areas, sidewalks; storm drains, sanitary sewer lines, and water lines under or upon the Common Area; open space, children's playgrounds, swimming pool, tennis courts, clubhouse and office and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. Without limiting the generality of the foregoing:

10.1.1 Landscaping, Janitorial, Painting. The Association shall have the exclusive right and responsibility for providing lighting, landscaping, irrigation, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial

services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of Common Area building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary.

10.1.2 Common Area Utilities and Services. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots. Water service to the Lots shall be through master meters maintained by the Association.

10.1.3 Patios and Fences in Common Area. The Association shall be responsible for the removal and replacement of any fence that extends into the Common Area under authority of an easement only when access to a utility line underneath such fence is requested by any utility company. The Association shall not be responsible for maintenance, repair, removal, or replacement of any patio that extends into the Common Area or any fence that was not installed under authority of an easement.

## 10.2 Association Responsibility for Lots.

10.2.1 Roof Coverings, Gutters, and Downspouts. The Association shall provide maintenance, repair, and replacement of the roof covers of the Residence buildings (but excluding the roof decks) and the gutters and downspouts, including replacement when necessary of roof trim pieces.

10.2.2 Siding. The Association shall provide maintenance and non-structural repairs of the siding and other exterior surfaces of the Residence buildings (but not any glass surfaces), including painting when necessary as determined by the Board.

10.2.3 Nonstructural Repairs. Nonstructural repairs may include but are not necessarily limited to replacement of trim, caulking, and other repairs of the roof covers or exterior surfaces of the Residence Buildings and other miscellaneous repairs not of a structural nature. Nothing in this Section 10.2 shall be deemed to impose on the Association any responsibility for replacing siding or any other exterior surface of the Residence buildings

or for maintenance, repair, or replacement of the roof structure or any other structural component of the Residence buildings.

10.3 Owner Responsibility for Maintenance.

10.3.1 Owner Responsibility for Lots. Except to the extent that maintenance of any improvement on a Lot is expressly and clearly made the responsibility of the Association, each Owner, at his or her or its sole expense, shall be responsible for the maintenance, repair and replacement of his or her Lot and all improvements upon the Lot and any authorized improvements that serve the Lot which may extend into the Common Area, keeping the same in a clean, sanitary, workable, and attractive condition and making all structural repairs as they may be required. Without limiting the generality of the foregoing, the Lot Owner shall be responsible for damage to the roof deck caused by placing planters, lawn furniture, or other articles on the roof deck that puncture the waterproof membrane.

10.3.2 Landscaping inside Patio or Yard. Each Owner shall be responsible for providing maintenance, including replacement when necessary, of all landscaping within the patio or yard of the Owner's Lot. Drainage easement areas upon the Lot shall be kept free of any structure, improvement or planting that may interfere with or change the direction of flow of drainage facilities (including grading) within the easement.

10.3.3 Owner Performance of Association Responsibilities. With prior written authorization from the Board, an Owner may perform upon his or her Lot at this or her sole expense such services as might otherwise be performed by the Association. In such event, the Owner shall not be entitled to any reduction in Assessments on account of such work and shall be solely responsible and liable for the performance and completion of such work.

10.3.4 Compliance with Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot or Dwelling shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 8 ("Architectural Approval").

10.4 Concealed Damage. If, in the course of performing maintenance, repairs, or replacement that is the Association's responsibility, the Association or its agents discover damage that is the Owner's responsibility, the

responsible Owner(s) shall be promptly notified of the situation and of the time in which required repairs or replacement must be performed in order for the Association to proceed with or complete the work for which the Association is responsible. If, for any reason, the responsible Owner does not perform or arrange for timely performance of the required repairs or replacement, and the Board in its reasonable judgment determines that a delay in the performance of such work by the Owner would unreasonably delay or increase the cost of the work for which the Association is responsible, then the Association shall have the right to arrange for the performance of such repairs or replacement and charge the cost thereof to the responsible Owner as a Reimbursement Assessment. Repair or replacement performed by the Association pursuant to this Section 10.4 may be performed on shortened notice to the Owner, notwithstanding the repair period authorized in Section 10.7 ("Board Discretion").

- 10.5 Authority for Entry of Lot. The Association or its agents shall have the right to enter any Lot whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits.
- 10.6 Limitation of Association Liability. Except as specifically provided in Section 10.1.3 ("Association Maintenance of Exclusive use Common Area and Lots"), the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the willful misconduct or gross negligence of the Association, its employees, contractors, or agents.
- 10.7 Board Discretion. The Board shall have the discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 13.12 ("Hearings Called by the Board"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

10.8 Owner Liability for Negligent Damage. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Lot in the form of a Reimbursement Assessment.

## ARTICLE 11            **INSURANCE**

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11.1 Insurance Coverage to be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

- (a) Hazard Insurance on Common Area - fire and extended coverage insurance covering the full insurable replacement value of the Common Area, in the name of the Association for the benefit of all Owners and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officer and the directors and the Owners;
- (b) Liability Insurance - general liability insurance insuring the Association, its officers and directors, and the Owners against any liability incident to ownership or use of the Common Area, with limits of liability to be set by the Board and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, the directors, and the Owners, and the guests, agents, and employees of any of them;
- (c) Directors' and Officers' Insurance - directors' and officers' liability insurance with limits to be set by the Board but in no event less than those set forth in *Civil Code* section 1365.7, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents and employees of any of them;
- (d) Workers' Compensation Insurance - workers' compensation insurance to the extent necessary to comply with any applicable laws;
- (e) Fidelity Insurance - standard fidelity bond covering all officers and directors of the Association, the manager, and any employees of the Association in an amount which shall be determined by the

Board and containing a waiver of any defense based on the exclusion of persons serving without compensation ; and

(f) Other Insurance - any other insurance and bonds as the Board may from time to time deem necessary or desirable.

11.2 Insurance Carriers. All insurance policies carried by the Association shall be written by companies qualified to do business in the State of California.

11.3 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.

11.4 Insurance to Be Maintained By Owner. Each Owner or Resident shall be responsible for procuring and maintaining hazard insurance (i.e., "fire" insurance) on the Owner's Lot and Dwelling improvements, insurance against Owner liability incident to ownership or use of the Owner's Lot or Dwelling, and insurance on the contents of the Dwelling and the Owners' or Residents' personal property.

11.5 Coverage Not Available. In the event any insurance policy or any endorsement listed in Section 11.1 ("Insurance to be Maintained by Association") is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage, as specified in the Bylaws.

11.6 Copies of Policies. Copies of all insurance policies (or certificates thereof showing that premiums have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

11.7 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1 ("Insurance Coverage to be Maintained by Association"). The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.



ARTICLE 12      **DAMAGE OR DESTRUCTION OF BUILDINGS;  
CONDEMNATION**

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- 12.1 Replacement or Repair of Common Area Property. In the event of damage to or destruction of the Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds, together with reserve funds allocated for replacement of the damaged or destroyed improvement, are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association as provided in this Declaration to cover the cost of the repair or replacement not covered by the insurance proceeds. If the sum of insurance proceeds, allocated reserve funds, and Special Assessment funds equal less than eighty-five percent (85%) of the cost of repair or replacement, the Members may elect not to cause such replacement or repair by the vote of two-thirds of the Total Voting Power of the Association. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.
- 12.2 Rebuilding or Repair of Improvements on Lots. If any Lot or any improvement on a Lot is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Committee. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and all such restoration or reconstruction shall be completed within 18 months after commencement. In the case of total or substantially total destruction of a Dwelling, if restoration is not commenced within one year after the occurrence of the destruction, the Board may require that the foundation and other installations be removed and the Lot restored to a safe, orderly, and natural condition.
- 12.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the

Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

- 12.4 Condemnation of Lots. If an entire Dwelling or Lot, or so much thereof as to render the remainder unfit for use as a Dwelling, is condemned or taken for a public or quasi-public use pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Dwelling or Lot is taken and the remainder is fit for use as a Dwelling, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Dwelling or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

## **ARTICLE 13                    ENFORCEMENT; NOTICE; HEARINGS**

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- 13.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; *provided, however,* that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.
- 13.2 Violation of Law is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

- 13.3 Owner Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several; that is, each co-Owner individually shall be fully liable and responsible and all co-Owners collectively shall be fully liable and responsible. The foregoing provisions of this Section 13.3 are in addition to and shall not limit the generality of the provisions of Section 6.3.2 ("Indemnification Regarding Business Activity"); Section 6.11 ("Animals") Sections 7.5 ("Association as Third Party Beneficiary"), and Section 7.6 ("Indemnification Regarding Tenant's Actions") and Section 8.22 ("Disclaimer of Liability").
- 13.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 13.5 Enforcement Rights Are Cumulative. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 13.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract Purchaser, member of his or her household, tenant, invitee, guest, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.
- 13.7 Limitation on Association's Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision

of the Governing Documents, except where such forfeiture or abridgement is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 9.19 ("Assignment of Rents as Security for Payment"). The provisions of this Section 13.7 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 13.8 ("Imposing Sanctions").

13.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 13, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

13.8.1 Loss of Good Standing. The Board may suspend a Member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Association voting rights shall be suspended and the Member shall be disqualified from serving on the Board.

13.8.2 Suspension of Other Rights. The Board may suspend a Member's or a Resident's right to use Common Area recreational facilities for so long as a Member remains in default of such payment, or for such period as may be specified by the Board if the violation involves misbehavior related to Common Area recreational facilities.

13.8.3 Monetary Penalties. The Board may impose monetary penalties or fines as Enforcement Assessments in accordance with a schedule adopted by the Board and distributed to the Members. Any change in the amount of the fines shall be deemed a Rule change pursuant to *Civil Code* section 1357.100 *et seq.*

13.8.4 Monthly Sanctions for Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one month or until the continuing

violation is remedied, whichever occurs sooner. If the continuing violation has not been remedied within the one month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.

13.8.5 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.

13.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.

13.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 13.11 ("Notices: Content, Delivery").

13.11 Notices: Content, Delivery. Any notices required or given under this Article 13 shall be in writing and shall, at a minimum, comply with any applicable statutes as to content and as to time and method of service. If no specific statutory requirements apply, any notice given by the Association to a Member shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have been violated; if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board. If no specific statutory requirements apply, any notice may be given by any method reasonably calculated to give actual notice to the affected Member or the Association, as the case may be; *provided, however*, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid and, if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association.

**13.12 Hearings Called By the Board; Executive Session; Open Session.**

Whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, *unless* (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 1367.1(c)(2) concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 1378(a)(5). In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.

**13.13 Owner Request for Hearing.** An Owner who has received a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("Enforcement by Association in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner is requesting a meeting to discuss a payment plan for a past due debt owed to the Association, the meeting shall be scheduled and conducted as provided in Section 9.16.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("Enforcement by Association in Emergency Situations"), the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 13.12 ("Hearing Called by the Board").

**13.14 Notice of Hearing Decisions.** Within fifteen (15) days after a hearing is conducted, the Board shall notify the Owner or Resident in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

### 13.15 Enforcement by Association in Emergency Situations.

13.15.1 Definition of Emergency Situation. For purposes of this Section 13.15, the following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

13.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 13.13 ("Owner Request for Hearing"), enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

### 13.16 Internal Dispute Resolution.

13.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 8 ("Architectural Approval") and of Section 13.9 ("Investigation of Complaints") through Section 13.15 ("Enforcement by Association in Emergency Situations") are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member that are subject to California *Civil Code* section 1363.810 through 1363.850 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall constitute the Association's "internal dispute resolution" process as required by *Civil Code* section 1363.820.

13.16.2 Statutory Default Procedures. If the Association shall fail to comply with the Association's internal dispute resolution

process, then the Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 1363.840, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 1363.830.

13.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* section 1369.510 *et seq.* and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 13.16.1 ("Fair, Reasonable, and Expedious Procedures"), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* section 1369.510 *et seq.*, without first complying with the "alternative dispute resolution" procedures set forth in that statute and referenced in Section 13.17 ("Alternative Dispute Resolution Before Initiating Lawsuit").

13.16.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process as part of the notice required by *Civil Code* section 1369.590.

### 13.17 Alternative Dispute Resolution Before Initiating Lawsuit.

13.17.1 When ADR Applies. The requirements of this Section 13.17 apply to civil action or proceedings as defined in *Civil Code* section 1369.510(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of the jurisdictional amount for a small claims action as stated in *Code of Civil Procedure* section 116.220 and 116.221, all as provided in *Civil Code* section 1369.520(b). *Civil Code* sections 1369.510 *et seq.* applies to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 13.17 do not apply to Assessment disputes or to an action in small claims court.



13.17.2 Statutory ADR Process. In accordance with *Civil Code* section 1369.510 *et seq.*, the Association or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 1369.510(a) and as the process is specified in *Civil Code* section 1369.530, 1369.540, and 1369.550.

13.17.3 Annual Summary of Alternative Dispute Resolution Process. In accordance with *Civil Code* section 1369.590, the Association shall annually provide the Members with a summary of the provisions of *Civil Code* section 1369.510 *et seq.* including the statement specified in *Civil Code* section 1369.590(a), and including a description of the Association's internal dispute resolution process as required by *Civil Code* section 1363.850.

13.18 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

13.19 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, Contract Purchaser, member of his or her household, tenant, invitee, guest, or pet has violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall, to the fullest extent permitted by law, be entitled to recover the full amount of all costs including attorneys' fees incurred by the Association in responding to such violation and/or in enforcing any Governing Document provision. In awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs, expenses, and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment.

## ARTICLE 14      AMENDMENT

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14.1 Required Member Approval. This Declaration may be amended by the affirmative vote of Members representing at least a majority of the Total Voting Power of the Association; *provided, however,* that, upon advice of legal counsel licensed to practice law in the State of California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member

approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature.

- 14.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the County Recorder.

## ARTICLE 15            GENERAL PROVISIONS

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- 15.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 15.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 15.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 15.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 15.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 15.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

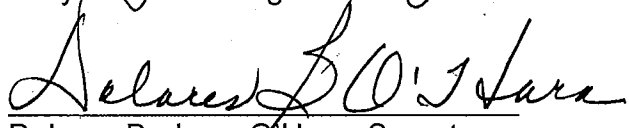
- 15.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- 15.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Santa Clara County, California.

IN WITNESS WHEREOF, we, the Members of STRAWBERRY SQUARE HOMEOWNER'S ASSOCIATION by the affirmative vote of at least seventy-five percent (75%) of the total voting power of said Association, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Strawberry Square, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Santa Clara County, California.

DATED: January 23, 2009

STRAWBERRY SQUARE  
HOMEOWNER'S ASSOCIATION

  
Gary Cecil Cunningham, President

  
Dolores Barbara O'Hara, Secretary

**EXHIBIT A**

**(Recital Paragraphs A &B)**

**List of Recorded Documents Superseded by  
this Amended and Restated Declaration**

Declaration of Covenants, Condition and Restrictions, recorded July 14, 1971, in Book 9417 at Pages 58 through 68, as Instrument No. 4048307,

Modification of Restrictions, recorded August 3, 1971 in Book 9448 at Pages 452 through 454, as Instrument No. 4063240,

Annexation of Additional Properties, recorded November 30, 1971, in Book 9609 at page 266, as Instrument No. 4146405,

Annexation of Additional Properties, recorded November 20, 1974, in Book 178 at Pages 723 & 324, as Instrument No. 4898447,

Annexation of Additional Properties, recorded February 10, 1975, in Book 274 at Pages 492 & 493, as Instrument No. 4944062,

Annexation of Additional Properties, recorded July 16, 1975, in Book 506 at pages 566 & 567, as Instrument No. 5049993,

all in the Official Records of the County Recorder of Santa Clara County, California.

CERTIFICATE OF ACKNOWLEDGMENT

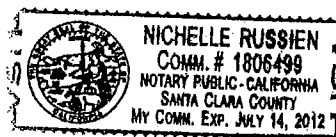
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Santa Clara )

On January 22<sup>nd</sup> 2009 before me, Nichelle Russien, Notary Public,  
personally appeared Gary Cecil Cunningham, who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Nichelle Russien (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 )  
 ) ss.  
COUNTY OF Santa Clara )

On January 22<sup>nd</sup> 2009, before me, Nichelle Russien, a Notary Public, personally appeared Dolores Barbara O'Hara, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Nichelle Russien (Seal)

