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Epsten Grinnell & Howell, APC  
9980 Carroll Canyon Road, 2nd Floor  
San Diego, California 92131

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**2008 AMENDED AND RESTATED**

**DECLARATION OF RESTRICTIONS**

**FOR**

**OAKS NORTH MARBELLA HOMEOWNERS ASSOCIATION**

*A Residential Planned Development and Senior Citizen Housing Development*

**(RE-RECORDED)**

This document is being re-recorded to correct a typographical error on page 42 (located between pages 34 and 35 on the original recorded copy) where the typed words "one hundred ninety-two" in Paragraph 7 should read "ninety-two." This is also being re-recorded to put page 42 in its proper location in the document.

**NOTICE**

**(Gov't. Code §12956.1)**

**If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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Epsten Grinnell & Howell, APC  
9980 Carroll Canyon Road, 2nd Floor  
San Diego, California 92131

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(Above Space for Recorder's Use)

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**DECLARATION OF RESTRICTIONS**

**FOR**

**OAKS NORTH MARBELLA HOMEOWNERS ASSOCIATION**  
*A Residential Planned Development and Senior Citizen Housing Development*

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**2008 AMENDED AND RESTATED**  
**DECLARATION OF RESTRICTIONS**  
**FOR**  
**OAKS NORTH MARBELLA HOMEOWNERS ASSOCIATION**

THIS 2008 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereafter written, by Oaks North Marbella Homeowners Association, a California nonprofit mutual benefit corporation ("Association"), with reference to the following Recitals which shall be deemed to be part of and incorporated into this Declaration by this reference.

**RECITALS**

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

Marbella Unit No. 1 ("Unit No. 1"), according to Map thereof No. 10789 ("Map No. 10789") filed in the Office of the County Recorder of San Diego County on December 14, 1983 ("Unit No. 1"); and

Marbella Unit No. 2 ("Unit No. 2"), according to Map thereof No. 11087 ("Map No. 11087") filed in the Office of the County Recorder of San Diego County on November 26, 1984.

B. The Community was developed as a Planned Development, as defined in Section 1351(k) of the California Civil Code, and consists of one hundred eighty-three (183) residential Lots (hereafter "Lots" or "Separate Interests") and related Common Areas.

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

1. The Declaration of Restrictions Recorded July 12, 1984 at File/Page No. 84-296039;
2. The First Amendment to Declaration of Restrictions Recorded August 28, 1984 at File/Page No. 84-328854;
3. The Declaration of Annexation for Phase 2 of the Development Recorded February 8, 1985 at File/Page No. 85-0044589;
4. The Declaration of Annexation for Phase 3 of the Development Recorded June 11, 1985 at File/Page No. 85-207320;
5. The Declaration of Annexation for Phase 4 of the Development Recorded August 2, 1985 at File/Page No. 85-287681;



6. The Declaration of Annexation for Phase 5 of the Development Recorded January 17, 1986 at File/Page No. 86-21689;
7. The Declaration of Annexation for Phase 6 of the Development Recorded May 8, 1986 at File/Page No. 86-182563;
8. The Declaration of Annexation for Phase 7 of the Development Recorded November 20, 1986 at File/Page No. 86-536003;
9. The Declaration of Annexation for Phase 8 of the Development Recorded March 10, 1987 at File/Page No. 87-124207;
10. The Declaration of Annexation for Phase 9 of the Development Recorded November 4, 1987 at File/Page No. 87-621709;
11. The Declaration of Annexation for Phase 10 of the Development Recorded February 23, 1988 at File/Page No. 88-81748;
12. The Declaration of Annexation for Phase 11 of the Development Recorded June 27, 1988 at File/Page No. 88-307123;
13. The Amendment to Declaration of Restrictions Recorded January 24, 1990 at File/Page No. 90-0042713;
14. The 2007 Amendment to Declaration of Restrictions Recorded October 9, 2007 at File/Page No. 2007-0650851;
15. and any other amendments, annexations or similar documents that may appear of Record, all in the Official Records of the County Recorder of San Diego County, hereinafter referred to together as "Original Declaration," unless the context clearly indicates otherwise.

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

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

F. The Original Declaration, in Article XVI, Section 3, as amended, provides that it may be amended by an instrument in writing approved by a majority of the Voting Power of the Association.

G. Since no Officer is designated in the Original Declaration to certify the approval of amendments, the Association, through the Board, has designated the President and Secretary to certify to the

approval of this 2008 Amended and Restated Declaration by their certification below and in Exhibit B and by their signatures and acknowledgments affixed to this Declaration.

H. The President and Secretary certify that, to the best of their knowledge and belief, the affirmative vote or written consent of at least the required percentage of the Voting Power of the Association has been obtained, and thus this Declaration is being Recorded to give effect to this approval.

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

#### ARTICLE 1 - DEFINITIONS

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

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

1.3 **References to Code Sections.** If any of the Laws cited herein are amended, or otherwise changed, the references herein shall be deemed to refer to the Laws as amended or otherwise changed. If a Law is repealed or otherwise deleted, any reference herein shall be deemed to refer to any successor Law.

#### ARTICLE 2 - USE RESTRICTIONS ENFORCED BY ASSOCIATION

2.1 **General.** The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other Person deriving rights from such Owner, shall be subject to the covenants, restrictions and other terms contained in the Governing Documents. Each such Person shall comply with the provisions of the Governing Documents and be subject to any enforcement actions in the event of violations. As more fully set forth in Section 11.1, both the Association, through the Board of Directors, and each Owner shall be entitled to enforce the Governing Documents.

The acquisition by any Person of a deed, lease or other instrument of transfer, or the mere act of occupancy of any real property against which this Declaration has been Recorded, shall be deemed an acceptance of all the terms, restrictions and other provisions contained in the Governing Documents. Likewise, the acceptance of any interest in any Lot pursuant to such deed, lease or other instrument of transfer shall be deemed an agreement by such Person that Association and each of the Owners are entitled to enforce all of such restrictions and will signify that such Person agrees to comply with the Governing Documents of the Association.

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

- 2.2.1 The Association shall have an easement in, to, and throughout the Common Area and the Improvements thereon to perform its duties and exercise its powers;
- 2.2.2 No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, or other vegetation from any Common Area. The Association may, at any time, as to any Common Area:
- (a) Reconstruct, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such Common area), in accordance with the original plans for the Community.
  - (b) Construct, reconstruct, replace or refinish any road Improvement or surface upon any portion of the Common Area used as a road, driveway or parking area;
  - (c) Replace injured or diseased trees, shrubs or other vegetation in the Common Area, and plant trees, shrubs and other vegetation to the extent that the Association deems necessary for the conservation of water and soil or for aesthetic purposes; provided however, that the Association may not permanently remove turf from the Common Area greenbelt without a vote of the owners, as provided in Section 7.3.8 of the 2004 Amended and Restated Bylaws;, and
  - (d) Place and maintain upon any the Common Area such signs as the Association may deem appropriate for the proper identification, use and regulation thereof.
- 2.2.3 Subject to the provisions of this Declaration, each Owner has nonexclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to any deed of conveyance or other instrument of transfer of any Lot, whether or not expressed in such deed of conveyance or other instrument of transfer;
- 2.2.4 The Owners' use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, including the right of the Association to:

- (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the conduct of Owners, their tenants and guests with respect to the Community and other Owners;
  - (b) Place reasonable limits on the number of Persons using the Common Area or Improvements within the Common Area;
  - (c) Cause the construction of additional Improvements in the Common Area, or to cause the alteration, maintenance, repair, replacement or removal of existing Improvements on the Common Area;
  - (d) Grant, dedicate, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area, including a grant or consent to allow one or more Owners to use portions of the Common Area exclusively subject to the Governing Documents as provided in Section 3.7.4 as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of the Owner's Unit without the approval of the affected Owner;
- 2.2.5 The Association may grant to third parties easements in, on, and over the Common Area for the purpose of for the purpose of constructing, installing, or maintaining roads, cable television, water and sewer facilities and other utility services in the Common Area, or other purposes reasonably related to the operation and maintenance of the Community, including without limitation (a) the providing of services to the Common Area or the Lots, (b) where necessary or convenient to satisfy or achieve appropriate governmental purposes or requests, or (c) providing additional income for the Association, and each Owner, in accepting his or her deed to the Lot, expressly consents to such easements. However, no such easement may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner;
- 2.2.6 Notwithstanding the easement rights or other rights contained herein, an Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. Where the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the Governing Documents. Thus, any delegated rights are subject to suspension following Notice and Hearing procedures;
- 2.2.7 [Civil Code §§1351(i)(2) & 1364(f)] All internal and external telephone wiring designed to serve a single Lot, but located outside the boundaries of the Lot, is allocated exclusively to that Lot. The Owner of the Lot shall be entitled to reasonable access to the Common Area or adjoining Lots for the purpose of

maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

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

- 2.3.1 Attempt to subdivide, partition or perform a boundary adjustment of a Lot without obtaining the prior written approval of the Association and the Lenders as provided in Section 15.5 or attempt to sell, assign, lease or convey the Owner's rights or interest in the Common Area separate and apart from his or her Lot;
- 2.3.2 Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, without Board approval, for any purpose other than as a private residence for a single household unit, a private garage for not more than two (2) cars and such customary out-buildings as are permitted from time to time by the ordinances of the City of San Diego, California. No portion of the Lot shall be used for any business, commercial, manufacturing, mercantile, storing, vending, or other nonresidential purposes. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent with the normal residential usage of the Community, (b) do not cause any external effects which are detrimental to neighboring Units or the Community, (c) are compatible with the characteristics of residential use in the Community, and (d) comply fully with the limitations and restrictions on in home occupations in residential zoning as found in the San Diego Municipal Code §141.0308 as amended from time to time or any similar ordinance enacted to replace it..
- 2.3.3 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents;
- 2.3.4 Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance purchased by the Association without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any Law;
- 2.3.5 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or on any Lot; provided, however, that reasonable amounts of these liquids, substances or materials sufficient for residential purposes may be placed in appropriate containers and properly stored;
- 2.3.6 Commit any waste in the Common Area, or engage in any noxious or offensive activity in any part of the Community, or engage in any activity that harasses, unreasonably annoys or offends any Owner, Resident, Association representatives, management representatives, Board members and/or vendors working in the Community, or that unreasonably obstructs or interferes with the rights of any Owner or Resident, or do any act that unreasonably threatens the health, safety or

welfare of other Residents of the Community, or do anything that would constitute a nuisance or that would violate any Law or allow any such acts to occur by the Owner's family, tenants, guests or invitees;

- 2.3.7 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board;
- 2.3.8 Keep or maintain any fixture, personal property or other object upon any Lot which interferes with the enjoyment of adjacent Lots, or which violates any Rules duly adopted by the Board;
- 2.3.9 Discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and drains of the Association or into the Common Area;
- 2.3.10 Discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use;
- 2.3.11 Perform any vehicle overhaul, repair, or non-emergency maintenance within the Community, except within an enclosed garage;
- 2.3.12 Convert or use any garage for purposes other than parking of the number of vehicles such garage was designed to contain and storage of reasonable amounts of household goods that do not interfere with the ability to park the number of vehicles such garage was designed to accommodate or create a fire or safety hazard.

2.4 **Parking.** No one may park any automobile or other motor vehicle except in the driveway, parking space or garage on the Owner's Lot designated for such use by the Governing Documents. Owners may park their vehicles on their Lots in the spaces intended for such parking, but not on the grass or any other non-paved surface of the Lot. No junk, derelict or unregistered vehicle shall be kept upon any portion of the Community so as to be visible from the Common Area or another Unit. The Board, in its discretion, may adopt reasonable Rules governing the operation, maintenance, storage and parking of vehicles.

2.5 **Pets; Restrictions on Animals.** [Civil Code §1360.5] Owners may keep and maintain pets, subject to any applicable Laws of the City of San Diego, including the City's "leash law," and subject to reasonable Rules and Regulations of the Association. Pets may not be bred, raised, or maintained for any commercial purpose. No pets or other animals shall be permitted in the Common Area except as specifically permitted by Rules and Regulations adopted by the Board. No Owner or other occupant of a Lot may raise or keep pets which interfere with the rights of any Owner or Resident of a Lot to the peaceful and quiet enjoyment of the Lot. An Owner shall be liable to each and all remaining Owners, their families, guests and invitees and to the Association for any and all damage or injury to persons or property caused by any pets brought upon or kept within the Community by such Owner or the Owner's family, tenants, guests and invitees. If the Board determines that any such pet or other animal creates an unreasonable annoyance or nuisance to any Owner or Resident or causes bodily injury to any person, the Board may order the removal of such animal within a reasonable time after such determination. The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other Person in the Community, for any damage or injury to Persons or property caused by any animal, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.

2.6 **Leases.** Nothing in this Declaration shall prevent an Owner from leasing or renting his or her Lot, provided that it is for a period of at least sixty (60) days and is in writing. Any agreement for the leasing or rental of a Lot (hereinafter "Lease") shall also provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration and other Governing Documents of the Association. Said Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the Governing Documents shall be a material default under the Lease. Any Owner who leases his Lot shall be responsible for ensuring compliance by such Owner's lessee with this Declaration and other Governing Documents of the Association. Any lease or rental agreement shall include the following language: "The undersigned, as lessee or tenant, acknowledges that he is familiar with all restrictions and rules in the Declaration, Bylaws and Rules and Regulations of the Association and agrees to abide by them." No Owner may lease less than the entire Lot. In addition, no Lot shall be leased for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days or any rental whatsoever, if the occupants thereof are provided with customary hotel services such as room service for food and beverages, maid services, the furnishing of laundry and linen or room service. The Association may prepare and provide an addendum to leases incorporating the terms required by this section that Owners shall incorporate as part of any lease. An owner who leases his Dwelling shall provide the names of the tenants to the Association.

Failure by an Owner to take legal action, including the commencement of proceedings to evict the tenant against such Owner's lessee who is in violation of this Declaration or other Governing Documents of the Association within ten (10) days after receipt of written demand so to do from the Board, shall entitle the Association, through the Board, to take any and all such action, including the commencement of proceedings in unlawful detainer on behalf of such Owner or the Association against such Owner's lessee. Any expenses incurred by the Association, including attorney's fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Board to levy an Assessment against such Owner and the Owner's Lot for all such expenses incurred by the Association. If such an Assessment is not paid within thirty (30) days after the due date, the Board may resort to all remedies of the Association for the collection thereof including those set forth in Article 4 hereof.

An Owner who leases or rents a Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Lot, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, keep all information current, and provide any other information reasonably needed and requested by the Association. All Owners leasing or renting a Lot promptly notify the Association of the address and telephone number where such Owner can be reached. Owners shall provide their tenants with copies of the Governing Documents, including the Rules and Regulations.

2.7 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Area or to any Association-owned property, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-Owners shall be joint and several.

2.8 **Trash Removal and Receptacles; Storage; Outdoor Laundering.** All equipment, trash receptacles, wood piles or storage piles shall be kept screened and concealed from view of neighboring Lots, streets, and Common Area. All rubbish, trash or garbage shall regularly be removed from each Lot and shall not be allowed to accumulate thereon or on the adjacent Common Area or to produce offensive odors or to become unsanitary, unsightly, or detrimental to any other property in the vicinity. Trash containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time, not to exceed twenty-four (24) hours before and after scheduled trash collection hours. No fences, hedges or walls shall be erected or maintained upon the Community except such as are installed in accordance with the initial

construction of the Buildings located on the Community, or as provided by the Board. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area.

### ARTICLE 3 - ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a non-profit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Community and is charged with the duties and granted the powers prescribed by Law and as set forth in the Governing Documents. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration or any other Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express or implied powers of the Association. If the Association shall lose or surrender its incorporated status for any reason, it shall be deemed to operate as an unincorporated association during any such period of time.

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

3.3 **Membership.** Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for Membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All Memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant Membership to the transferee. For each Lot, there shall be on file with the Association an address of record for the Owner, if different from the address of the Lot, and a phone number in case of emergency, all of which the Owner shall keep current.

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

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

3.6 **Rules and Regulations.** [Civil Code §1357.130] The Board shall have the power to adopt reasonable Rules and Regulations governing the use of the Lots, the Common Area, any common facilities and Association-owned property, and the conduct of persons at Board and Members' meetings. The Board shall comply with Civil Code §1357.130, to the extent applicable, when adopting any Rules and Regulations.

3.6.1 The Rules and Regulations may include, but are not limited to:

- (a) Reasonable restrictions on the use of the Common Area and Lots and by the Owners and their families, guests, employees, tenants and invitees.
- (b) Rules of conduct for the Owners, their families, guests, employees, tenants and invitees as to activities in the Common Area and the Lots including rules that the Owner whose family members, guests, employees, tenants or



invitees leave property on the Common Area in violation of the Rules, may be assessed to cover the expense incurred by the Association in removing such property and storing or disposing of it.

- (c) The establishment of reasonable Notice and Hearing procedures, as provided in the Bylaws or other Governing Documents, and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.

3.6.2 A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within fifteen days after adoption by the Board.

3.6.3 The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.

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

3.7.1 The power to establish, fix, levy, collect, and enforce the payment of Assessments against the Owners in accordance with the procedures set forth in Article 4 herein;

3.7.2 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, as provided in the California Civil Code and Code of Civil Procedure.

3.7.3 The right to discipline Owners for violation of any of the provisions of the Governing Documents (i) by suspending the Member's Membership rights, including the Member's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Owner's Lot, (ii) by imposing monetary fines, subject to the requirements for Notice and Hearing as more fully set forth in the Bylaws or other Governing Documents, and (iii) to the extent allowed by Law, Recording a notice of noncompliance against the Owner's Lot;

3.7.4 [Civil Code §1363.07] Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the Board shall have the right to allow one or more Owners to use portions of the Common Area, provided that such grant is done in compliance with Civil Code Section 1363.07, that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community;

3.7.5 The power, without the approval of the Membership, to bid and to acquire any Lot at a foreclosure sale, but only when foreclosing on an Owner's assessment lien and in an amount not to exceed the amount of the delinquent assessment and all lawful charges owed by the Owner.

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

#### ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

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

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy Assessments sufficient to perform its obligations. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Community; and to discharge any other obligations of the Association under this Declaration. All Assessment payments shall be put into general operating and Reserve funds to be used for the foregoing purposes. Unless the Association is exempt from federal and state taxes, all Reserves shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the Regular Assessments of the Association, or in any other manner authorized by Law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed to the Association as income.

4.3 **Budget Preparation.** [Civil Code §1365] Concurrently with preparation of the financial documents and budget required by Law and the Bylaws, the Board shall estimate the expenses to be paid during the next fiscal year, including a reasonable provision for contingencies, replacements and Reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the Regular Assessments for the budgeted year. Failure of the Board to estimate the net charges within the time period stated herein shall not void any Assessment imposed by the Board.

4.4 **Mid-Year Revision of Budget.** If, at any time, during the course of any fiscal year the Board determines that the amount of the Regular Assessment is inadequate or excessive, the Board shall have the power, at a regular or special meeting, to revise the assessment for the balance of the assessment year. The Board may increase the assessments mid-year so long as the increase does not exceed the annual maximum for Regular or Special Assessments permitted by law as described in Section 4.10 herein. Any increase may not be effective until the Board provides the notice required by law as described in Section 4.11 herein.

4.5 **Regular and Special Assessments.** [Civil Code §1366] The Board shall determine and levy such Regular and Special Assessments as necessary to perform its duties under the Governing Documents, to meet its obligations, and to comply with applicable Laws. All Lots shall bear an equal share of the total assessment and shall be allocated among, assessed against and charged to each Owner according to the ratio of the number of Lots owned by the assessed Owner to the total number of Lots subject to Assessment. Regular Assessments for fractions of any month shall be prorated. Each Owner is obligated to pay Assessments to the Association in equal quarterly installments on or before the first day of each month of each quarter unless the Board adopts an alternative method for payment. Regular Assessments may be increased, or Special Assessments may be imposed, as the Board in its sole discretion determines necessary,

subject however, to the increases permitted under Section 4.10 below. Due to the time value of money, a Special Assessment may be structured so that some Owners pay the principal amount as a lump sum, while others pay the principal amount plus financing over time, and each shall be considered an equal share of the total Assessment.

4.6 **Special Assessments.** If the Board determines that the amount to be collected from Regular Assessments will be inadequate to defray the Common Expenses for the year due to the cost of any construction, unexpected repairs or replacements of Improvements upon the Common Area, or any other reason, it shall make a Special Assessment for the additional amount needed. Special Assessments shall be levied and collected in the same manner as Regular Assessments, subject however, to the increases permitted under Section 4.10 below.

4.7 **Individual Assessments.** The Board may levy other Assessments against specific Owners and their respective Lots ("Individual Assessments"), including but not limited to monetary penalties or fines levied against an Owner and his or her Lot as a disciplinary measure for failure of such Owner, or his or her tenants, guests, invitees, agents, or others claiming under such Owner, to comply with the Governing Documents.

The Board shall provide an Owner with Notice and Hearing procedures in accordance with the Bylaws or other Governing Documents, before levying an Assessment provided for in this Section. Individual Assessments may include attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration.

4.8 **Collection of Monetary Penalty.** [Civil Code §1367] If the Board of Directors imposes a monetary penalty or fine against an Owner, that fine shall be subject to costs, late charges and interest as described in Section 4.12 for delinquent payment. Furthermore, such fine or monetary penalty may become a lien on the Lot, collectable by the Association as allowed by Section 4.13 herein, so long as such monetary penalty is for damage to the Common Area or other areas the Association is responsible for maintaining. If such monetary penalty is for damage to the Common Area or for damage to other areas the Association is responsible for maintaining, the monetary penalty also may become a lien on the Unit, collectable by the Association through judicial foreclosure or other methods permitted by Law or by Section 4.13 herein, so long as the Association does not seek to enforce such a lien through nonjudicial foreclosure.

4.9 **Lots Not Subject To Assessment.** Assessments that would normally become due on Lots, but which Lots are owned by the Association, shall be deemed to be Common Expenses collectible from all of the remaining Lots in the same proportion that each Lot bears to all other Lots, after excluding the Lots owned by the Association.

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

4.10.1 Required by a court order;

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

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

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

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

No late charge may be imposed more than once for the delinquency of the same payment. The amounts delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided by Law and in Section 4.13 below.

4.13 **Collection of Delinquent Assessments and Late Charges.** [Civil Code §§1367, 1367.1, 1367.4 & 2924b] Delinquent Assessments and any related late charges, reasonable costs of collection (including actual attorney's fees), and interest, assessed in accordance with Section 4.12 herein, shall become a lien upon the Lot in accordance with the Bylaws and California Civil Code Section 1367, 1367.1, 1367.4 or other applicable statute. The Board may enact policies, not in violation of applicable law, including Civil Code Sections 1367 and 1367.1, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner. The Association may collect Assessments or foreclose on liens in the manner set forth in the applicable provisions of the Civil Code, and in any other manner authorized or permitted by Law. Unless otherwise required by Law, any Officer of the Association, any employee or agent of the Association authorized to do so by the Board, or the Association's attorney is authorized to sign any notices, liens or other documents, as needed for the collection of delinquent Assessments and other costs of collection. Any lien Filed to secure collection of delinquent Assessments shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

4.14 **Priority of Assessment Lien.** The Assessment Lien referred to in Section 4.13 shall be superior to all other liens, except (i) all taxes, bonds, Assessments and other levies which, by Law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of Record. Sale or transfer of any Lot shall not affect this Assessment Lien; provided that the transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such Assessments as to payments which became due prior to the transfer, except for those Assessment liens Recorded prior to the First Mortgage. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the Lien thereof.

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

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

## ARTICLE 5 - MASTER ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 **Membership in Master Association.** Every Owner of a Lot shall be a Regular Member of the Master Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles of Incorporation and the Bylaws of the Master Association and the rules and regulations adopted thereunder from time to time by the Board of Directors and officers of the Master Association.

5.2 **Additional Regular Members.** The Association believes that the Master Association was fully developed years ago so that all members of the Master Association have already been added. However, to avoid any problem that might exist, if this assumption is incorrect, the following sentences are included. Additional Regular Members may be admitted to the Master Association as additional land is covered by subdivision map(s) within the area described on Exhibit "B" attached to the Original Declaration Recorded with the Office of the County Recorder of San Diego County, California on July 12, 1984 at File/Page No. 84-296039, and lots within such subdivided area are subjected to declaration(s) of restrictions requiring the owners thereof to be Regular Members of the Master Association upon acquisition of title thereto. It is contemplated that when the property described on the said Exhibit "B" is fully developed there will be approximately 2,000 Regular Members of the Master Association.

5.3 **Non-Voting Memberships.** The Master Association may have non-voting memberships upon such terms and conditions as may from time to time be set forth in the Bylaws of the Master Association and by resolution of the Board of Directors of the Master Association.

## ARTICLE 6 - PROPERTY RIGHTS IN MASTER ASSOCIATION RECREATION AREA

6.1 **Owners' Easements of Enjoyment in Recreation Area.** Every Owner of a Lot shall have a right and easement of enjoyment in and to the Recreation Area which shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

- 6.1.1 the right of the Master Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Recreation Area;
- 6.1.2 the right of the Master Association to suspend the voting rights and right to use of the recreational facilities by such an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after notice and the opportunity for a hearing by the Board of Directors of the Master Association as provided in the Bylaws of the Master Association;
- 6.1.3 the right of the Master Association to dedicate or transfer all or any part of the Recreation Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective except upon the vote or written assent of two-thirds (2/3) of the voting power of the Master Association.

6.2 ***Delegation of Use in Recreation Area.*** Any Owner of a Lot may delegate, in accordance with the Bylaws of the Master Association his right of enjoyment to the Recreation Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

#### **ARTICLE 7 - COVENANT FOR MASTER ASSOCIATION MAINTENANCE ASSESSMENTS**

7.1 ***Creation of the Lien and Personal Obligation of Assessments.*** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Master Association in accordance with the Bylaws of the Master Association: (i) regular fees and assessments, and (ii) special assessments, such assessments to be established and collected as provided in the Bylaws of the Master Association. The regular fees and assessments, together with the interest, costs and reasonable attorney's fees thereon, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

7.2 ***Uniform Rate of Assessment.*** Both regular fees and assessments and special assessments of the Master Association must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

7.3 ***Date of Commencement of Regular Fees and Assessments: Due Dates.*** The Board of Directors of the Master Association shall fix the amount and due dates of regular fees and the assessment against each Lot as provided in the Bylaws of the Master Association. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Master Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Master Association setting forth whether the assessments on a specified Lot have been paid.

7.4 ***Effect of Non-Payment of Fees and Assessments: Remedies of the Association.*** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate levied by the Master Association, but not to exceed the rate permitted by law. The Master Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot as set forth in the Bylaws of the Master Association or by law. No Owner may waive or

otherwise escape liability for the assessments provided for herein by non-use of the Recreation Area or abandonment of his Lot.

7.5 ***Subordination of the Lien to Mortgages.*** The lien of the fees and assessments of the Master Association provided for herein shall be subordinate to the lien of a First Mortgage or first deed of trust made in good faith and for value upon any Lot. Sale or transfer of any Lot shall not affect the fee and assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage or trust deed foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon.

7.6 ***Exempt Property.*** All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California shall be exempt from the fees and assessments of the Master Association created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE 8 - ARCHITECTURAL COMMITTEE AND ARCHITECTURAL APPROVALS

8.1 ***Architectural Control Administered by Master Association.*** All matters involving architectural control and the approval of various types of alterations and Improvements on an Owner's Lot are subject to the rules and requirements of Oaks North Community Center, Inc., the Master Association. Owners should contact the Master Association for information and approval before undertaking any works of Improvement on their Lots.

8.2 ***Architectural Committee.*** The Board of Directors of the Master Association shall have the power to appoint all of the members of the Architectural Committee. Members of the Architectural Committee appointed by the Board of Directors of the Master Association shall be members of the Master Association.

8.3 ***Architectural Control.*** No Building or other Structure or landscape Improvements (including irrigation, plant materials and hardscape) or other Improvements shall be erected, placed or altered upon any Lot until the location and the complete plans and specifications, including the color scheme, of each Building, landscape Improvement, including irrigation system, plant materials, hardscape, fence and/or wall to be erected or planted upon the Lot have been approved in writing by the Architectural Committee; provided, however, that in the event the Committee fails to approve or disapprove such location, plans and specifications or other request made of it within sixty (60) days after the submission thereof to it, then such approval will not be required, provided that any Building so to be erected conforms to all other conditions and restrictions herein contained and is in harmony with similar Structures erected within the Community. The grade, level or drainage characteristics of a Lot or any portion thereof shall not be altered without the prior written consent of the Architectural Committee.

## ARTICLE 9 - USE RESTRICTIONS ENFORCED BY MASTER ASSOCIATION

9.1 ***Residential Purposes Only.*** No Lot shall be used except for residential purposes, and no building or buildings shall be erected, constructed, altered or maintained on any Lot other than one (1) detached, single-family dwelling, a private garage for not more than two (2) cars and such customary outbuildings as are permitted from time to time by the ordinances of the City of San Diego, California.

9.2 ***New Building Only.*** No Building of any kind shall be moved from any other place onto any Lot, or from one Lot to another Lot, without the prior written consent of the Architectural Committee, except for temporary Structures used in connection with the construction of a Building or Improvement on such Lot.

9.3 ***Minimum Floor Area of Dwellings.*** The ground floor area of the main Structure located on any Lot, exclusive of open porches, patios, exterior stairways and garages, shall not be less than 1,200 square feet.

9.4 ***Balconies and Decks.*** No balcony or deck shall be higher above ground than the second-floor level, except with the written approval of the Architectural Committee.

9.5 ***No Second-Hand Materials; Painting Required.*** No second-hand materials shall be used in the construction of any Building or other Structure without the prior written approval of the Architectural Committee. All Buildings and fences which are of frame construction shall be painted or stained with at least two (2) coats upon completion unless otherwise approved in writing by the Architectural Committee.

9.6 ***Diligence in Construction Required.*** The work of constructing and erecting any Building or other Structure shall be prosecuted diligently from the commencement thereof, and the same shall be completed within a reasonable time and in no event later than 150 days after commencement of construction. No out-building shall be completed prior to the completion of the Dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in building a Dwelling on the Lot, but such temporary facilities shall be removed as soon as the Dwelling is completed.

9.7 ***Trees.*** All trees shall be trimmed by the Owner of the Lot upon which the same are located at the direction of the Architectural Committee based upon a determination by the Architectural Committee that such trimming is necessary to prevent the obstruction of the view of other Lot Owners. Before planting any trees the proposed location of such trees shall be approved in writing by the Architectural Committee.

9.8 ***Exterior Alterations.*** No alteration shall be made in the exterior design or color of any Structure unless such alterations, including any additions, shall have first been approved in writing by the Architectural Committee. Materials and motif to be used must harmonize, complement and be of similar materials and motif used in the construction of existing Dwellings on Lots in the Community. Where fences or hedges are allowed, review by the Architectural Committee in relation to normal enjoyment of view by other Lot Owners shall be required.

9.9 ***Fences, Hedges and Rails.*** With the prior written consent of the Architectural Committee, the Owners of each Lot may erect and maintain a fence or wall on his Lot lines. Each Owner shall maintain and keep in good condition and repair all fences located on a lot line of his Lot. Except as otherwise provided herein, no fence, rail or hedge over thirty-six (36) inches in height shall be placed in front of the setback line of any Lot. Generally, the Architectural Committee will not approve any fence, wall (except a retaining wall), rail or hedge over seventy-two (72) inches in height.

9.10 ***Antennas.*** There shall be no outside television or radio antennae constructed, installed or maintained in or on any Lot for any purpose whatsoever, subject only to what is expressly authorized by state and federal Law.

9.11 ***Drying Yards.*** No drying yards shall be permitted on any Lot unless screened from all views exterior to the Lot on which the drying yard is located by fence, hedge or shrubbery, which screening and the adequacy thereof shall be subject to the approval of the Architectural Committee.



9.12 **No Tents, Shacks, Commercial Vehicles, etc.** No tent, shack, trailer, basement, garage or outbuilding shall at any time be used on any Lot as a residence, either temporarily or permanently, nor shall any residence of a temporary character be constructed, placed or erected on any Lot. No commercial truck, camper, trailer, boat of any kind, or other single or multi-purpose engine-powered vehicle other than a standard automobile or an approved golf cart, shall be parked on any Lot except temporarily and solely for the purpose of loading or unloading.

9.13 **No Signs.** [Civil Code §§712, 713 & 1353.6] No sign other than one (1) sign of customary and reasonable dimensions advertising a Lot for sale shall be erected or displayed upon any of said Lots or upon any building or other Structure thereon without the prior written permission of the Architectural Committee, and all signs must conform with applicable City of San Diego ordinances.

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

9.15 **No Farm Animals, Etc.** No turkeys, geese, chickens, ducks, pigeons or fowl of any kind, or goats, rabbits, hares, horses or animals usually termed "farm animals," shall be kept or allowed to be kept on any Lot.

9.16 **No Commercial Business or Nuisance.** No commercial dog raising or cat raising or any kind of commercial business shall be conducted on any Lot. No public or private nuisance or activity which may become an annoyance or nuisance to the neighborhood shall be permitted on any Lot.

9.17 **Drainage.** Each Lot Owner shall permit free access by owners of adjacent or adjoining Lots to slopes or drainageways located on his Lot when such access is necessary for the maintenance of permanent stabilization on said slopes, or of the drainage facilities to protect property other than the Lot on which the slope or drainageway is located. No Owner of a Lot shall in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots, and each Owner will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of said Lots was completed by Declarant.

9.18 **Slope Control, Use and Maintenance.** Each Lot Owner will keep, maintain, water, plant and replant all slope banks and other landscaped areas located on such Owner's Lot, so as to prevent erosion and to create and maintain an attractive appearance; provided, however, any slopes existing within the Common Maintenance Area will be maintained by the Association. No Structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope banks or other portions of any Lot which may damage or interfere with established slope ratios, create erosion or sliding problems or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The Architectural Committee shall be the sole judge in determining compliance with the provisions of this paragraph, and each individual Lot Owner shall promptly perform or conform to all directives issued by the Architectural Committee for compliance with the provisions of this paragraph.

9.19 **No Subdivision of Lots.** No Lot shall be resubdivided into building sites having a frontage of less than shown on the original recorded map of MARBELLA UNIT NO.1, Filed for record in the Office of the County Recorder of San Diego County, California, on December 14, 1983 as Map No. 10789.

9.20 **Interpretation of Restrictions.** All questions or interpretations or constructions of any of the terms or conditions contained in this Article 9 shall be resolved by the Architectural Committee, and its decision shall be final, binding and conclusive on all of the parties affected.

9.21 ***Failure to Comply with Order of Architectural Committee.*** In the event of the failure of individual Lot Owner to comply with a written directive or order from the Architectural Committee, then in such event the Architectural Committee shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the property where a violation of these restrictions exists, and the cost of such performance shall be charged to the Owner of the Lot in question and may be recovered by the Architectural Committee in an action at law against such individual Lot Owner.

9.22 ***Senior Citizen Community.*** This section was originally enacted by an amendment Recorded on January 24, 1990 as Document No. 90-042713.

9.22.1 This residential Community is a senior citizen housing development.

9.22.2 It is the intention of the Owners of this residential housing community to qualify and be operated and maintained as a "senior citizen housing development" as defined under the provisions of Section 51.3 of the California Civil Code and to qualify and be operated and maintained as housing intended and operated for occupancy by at least one person 55 years of age or older under the provisions of the Fair Housing Amendments Act of 1988, 42 U.S.C. Section 3601 et seq. ("Qualified Senior Housing").

9.22.3 No Dwelling within this Community shall be occupied unless at least one person in permanent residence is at least 55 years of age or older ("senior citizen") or is a "qualified permanent resident" as that term is defined in Section 51.3 of the Civil Code. Each other person residing in the Dwelling, except the spouse or cohabitant of the senior citizen or a person providing primary economic or physical care to the senior citizen, must be at least 45 years of age. Temporary residence by a person less than 45 years of age (guest) is permitted for a period not in excess of sixty (60) days in any twelve month period. Upon the death or dissolution of marriage or upon hospitalization or other prolonged absence of the senior citizen, any qualified permanent resident shall be entitled to continue his or her occupancy of the Unit. The Owner shall provide verification of the age of occupants of the Unit upon request by the Association.

9.22.4 The enactment of this amendment shall not deprive any person of occupancy of a Unit within the Community who was occupying the Unit in compliance with the terms of this Declaration prior to enactment of this amendment.

9.22.5 The Board shall have the power, but not the duty, to allow such exceptions to the restriction set forth in subparagraph 9.22.3 above as said Board, in its sole discretion, deems fair and just. provided, however, that any such exception from the provision of subparagraph 9.22.3 above shall be allowed only if:

- (a) Such exception is permitted under the provisions of the laws specified in subparagraph 9.22.2 above as the same may be amended from time to time, and
- (b) Such exception will not cause the Project to cease to qualify as "Qualified Senior Housing," under the provisions of the laws specified in subparagraph 9.22.2 above, and
- (c) Such exception is not otherwise incompatible with the operation, maintenance and general social environment of a senior community.

9.22.6 The provisions of this Section 9.22, apply to occupancy, residency and use of a Dwelling Unit, only. Nothing herein shall be construed as affecting the right to own a Dwelling Unit.

9.22.7 In order to avoid further amendments to the Declaration which may be necessitated by subsequent legislative or administrative enactments pertaining to age restrictions, the Board shall be empowered to promulgate rules and regulations to implement the terms of any laws and administrative regulations which impose limitations on age restrictions in housing and to amend such rules and regulations from time to time to comply with any subsequent legislative or administrative enactments pertaining to age restrictions. The provisions of this section shall be deemed to have been amended by any rules and regulations promulgated by said Board under the authority of this amendment. Notwithstanding any other provision of this Declaration, the Board shall be responsible for the interpretation and enforcement of this section.

9.23 **Height Limit of Dwellings.** Except upon the written consent of the Architectural Committee, no Dwelling or Structure shall be constructed or maintained on any Lot which is more than eighteen (18) feet in height from the average grade of the Lot.

9.24 **Planting.** The size, type and location of materials to be used shall be approved by the Architectural Committee in writing prior to any planting on a Lot.

9.25 **Construction Clean-Up and Conformity with Plans.** When plans and specifications for the construction of Improvements are submitted to the Architectural Committee pursuant to provisions hereof, said submission shall, at the request of the Architectural Committee, be accompanied by a deposit of \$200.00 to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the Lot drainage swales and Structures correctly drain surplus water to the street or other approved outlets, all as shown on the plans and specifications submitted to the Architectural Committee for approval. In the event of a violation of this restriction, the Architectural Committee may give written notice thereof to the builder and the Owner of the Lot in question that if such violation is not cured or work commenced to cure the same within forty-eight (48) hours after the mailing of said notice, the Architectural Committee may correct or cause to be corrected said violation and use said deposit, or as much thereof as may be necessary, to cover the cost of such correction work. In the event the cost of curing said violation shall exceed the amount of said deposit, said excess cost shall be paid by the Owner of the Lot in question to the Architectural Committee. Said deposit or any part thereof remaining in the hands of the Architectural Committee at the completion of the construction work shall be returned by the Architectural Committee to the person who made the deposit.

9.26 **No Liability.** Neither the Architectural Committee, nor any member thereof, nor their duly authorized representatives shall be liable to the Master Association, the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations, preservation of views and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

9.27 **Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, setbacks, floor area or placement of Structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including, but not limited to, zoning ordinances and Lot setback lines or requirements imposed by The City of San Diego or any other governmental authority.

9.28 **No Move-Ons.** No Structure of any kind shall be moved from any other place onto any Lot without the prior written permission of the Architectural Committee.

## ARTICLE 10 - REPAIR AND MAINTENANCE

10.1 **General.** The Association and all Owners shall fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, all maintenance, repair, replacement, restoration, upkeep, weatherproofing, cleaning or application of paint, stain, paper, plaster, tile, and other finishes as needed to keep exterior or visible Improvements in a clean, safe, properly ventilated, watertight, dry, sanitary and attractive condition and to preserve the attractive appearance and values of each Lot, the Common Area, and the Community, and to ensure that there is no threat to the health, safety or welfare of any Resident.

All Improvements shall be maintained in accordance with the original construction design of the Improvements in the Community, except that the Board, the Master Association and its Architectural Committee shall have the power to determine the standards of such maintenance, including the standards of landscaping, the selection and replacement of plant materials and the standards for maintenance by the Association. The replacement of structural and exterior items by Owners shall be subject to the architectural approval requirements of Article 8.

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

10.3 **General Maintenance Duties.** [Civil Code §1364] Unless otherwise provided in this Declaration, the Association is responsible for repairing, replacing, or maintaining the Common Area and Common Maintenance Areas, and the Owner is responsible for maintaining his or her own Lot. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

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

Board the right to remove the unauthorized Improvement summarily and without compensation to the party who installed it.

10.4 ***Specific Maintenance Duties of the Association and Owners.*** Subject to Article 13 pertaining to the destruction of Improvements and Article 14 pertaining to eminent domain, the paragraphs below set forth the specific respective maintenance duties of the Association and the Owners within the Community. If this paragraph contains an ambiguity or provides no guidance, then the general maintenance duties in Section 10.3 shall be used to determine whether the Association or the Owner has the maintenance responsibility for the component or components involved.

10.4.1 ***Association Maintenance Duties.*** The Association shall, in perpetuity, maintain and provide for the maintenance of all the Common Area and Common Maintenance Area and all Improvements thereon, including any entry walls, fire road, walkways, walkway fences, and Common Area drainage systems, in good repair, appearance and working order. The Association shall provide landscaping and gardening, including maintenance of common irrigation lines and timers, to properly maintain and periodically remove and/or replace when necessary the trees, plants, grass and other vegetation in the Common Area and Common Maintenance Area. The Association shall have the right to enter onto any Lot (but not within the Dwelling thereon) as may be necessary for the construction, maintenance or emergency repair of the Common Area or Common Maintenance Area or, if necessary, for the benefit of the Owners collectively.

10.4.2 ***Owner Maintenance Duties.*** Each Owner shall, in perpetuity, keep and maintain in good repair and appearance all portions of such Owner's Lot and Improvements thereon (other than the Common Maintenance Area), including, but not limited to, and all structural and non-structural components and other parts of the Dwelling, both inside and out, any fence or wall and concrete terrace drains which are located thereon. Each Owner shall water, weed, maintain and care for the hardscape and landscaping Improvements located on such Lot, all Lot irrigation and drainage systems (other than any Common Maintenance Area, the maintenance of which is the responsibility of the Association) so that the same presents a neat and attractive appearance. Each Owner shall maintain the above and below ground water and sewer lines from the Dwelling to the point that the City assumes maintenance of the water or sewer lines. The Owner of each Lot shall keep and maintain the exterior of the Dwelling in good condition and appearance at all times. No Owner shall interfere with or damage the Common Area or Common Maintenance Area nor interfere with or impede the Association in connection with the maintenance thereof as provided herein.

10.5 ***Damage Caused by Owner or Item Under Control of Owner.*** [Civil Code §1367] If any damage to the Common Area or any Lot results from the act or omission of any Owner, or such Owner's family members, tenants, guests, invitees, pets or other Person or entity deriving any interest through such Owner, or from any item, the maintenance, repair or replacement of which is an Owner responsibility, the cost of all repairs shall be borne solely by the responsible Owner. In the case of joint ownership of a Lot, the liability of the co-Owners shall be joint and several, unless the co-Owners and the Association have agreed in writing to an alternative allocation of liability.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the

damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

The Lot Owner shall be responsible for performing the repair of any damage to his or her Lot or other property over which such Owner has control. The Owner of any other Lot which sustained damage shall be responsible for performing the repair of any such damage, and may recover the cost thereof from the Owner responsible for causing such damage.

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

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

**10.6 Termite Control.** [Civil Code §1364] The responsibility for control of wood destroying pests or organisms shall be as provided in California Civil Code Section 1364. Specifically, each Owner shall be responsible for the control of wood destroying pests or organisms on his or her Lot, and the Association shall be responsible for the control of wood destroying pests or organisms in the Common Area Improvements, if any. Although the Association ultimately is responsible for the control of termites and wood-destroying pests in the Common Area, it is entitled to use its discretion to perform the work at the time scheduled and in the manner deemed appropriate by the Board. The Association is not responsible nor legally required to perform termite treatment or to repair possible termite damage just to enable a sale to close escrow.

**10.7 Owner Notice to Association.** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify Association representatives of the condition as soon as possible.

## ARTICLE 11 - ENFORCEMENT

**11.1 Right to Enforce; Remedies.** [Civil Code §§1354, 1363.810 *et seq.*, 1363.510 *et seq.*; Corp. Code §7231] The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all provisions, conditions, restrictions, covenants, easements, reservations, liens and charges now or hereafter imposed by the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other. Before commencing any legal action, the Association and the Owners shall comply with any applicable requirements of Civil Code Sections 1354, 1363.810 *et seq.*, 1363.510 *et seq.* or any comparable statutes. Corporations Code Section 7231, also known as the "business judgment rule" applies to Board actions and committee decisions in connection with all interpretation and enforcement of the Declaration, including architectural control, regulation of uses within the Community, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

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

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

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

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

11.6 **Compliance with Statute.** [Civil Code §§1363.810 *et seq.* & 1369.510 *et seq.*] All activities to enforce the provisions of the Governing Documents shall be conducted in accordance with all applicable Laws, statutes and ordinances, including any obligation to attempt to use alternative dispute resolution, whether pursuant to Civil Code Sections 1363.810 *et seq.* & 1369.510 *et seq.* or any similar statute. This Section shall apply to both the Association and to all Owners.

11.7 **Attorney's Fees.** [Civil Code §1354] If an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its actual attorney's fees and costs so incurred. If litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorney's fees and costs. Said costs and attorney's fees shall constitute a lien on the Lot which is enforceable pursuant to Article 4 herein. This Section shall also apply to attorney's fees incurred to collect any post-judgment costs.

## ARTICLE 12 - INSURANCE

12.1 **General Liability Insurance.** [Civil Code §1365.7] The Association shall obtain and maintain a policy or policies of comprehensive public liability insurance to protect the Association, its Officers, Directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members with respect to the Common Area and any Lots owned by the Association. Limits of liability under the insurance shall not be less than one million dollars (\$1,000,000) covering all claims for death, personal injury, and property damage arising out of a single occurrence. If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute is a larger amount, the statute shall control.

12.2 **Directors and Officers Liability Insurance.** [Civil Code §1365.7] The Association shall also obtain and maintain one or more policies of insurance which shall include coverage for the individual

liability of Officers and Directors of the Association for negligent acts or omissions of those Persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be in the minimum amount of one million dollars (\$1,000,000). If the minimum amount necessary to comply with Civil Code Section 1365.7 or any successor statute specifies a larger amount, the statute shall control.

12.3 **Fidelity Coverage.** The Association shall purchase and maintain a bond or other fidelity coverage, naming the Association as an obligee, for any Person or entity handling funds of the Association, whether or not such Persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, if reasonably available, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g. crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. However, the aggregate amount of this coverage shall be at least three (3) months' aggregate Assessments on all Lots plus Reserve funds.

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

12.5 **General Insurance Requirements.** Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association and its Officers, Directors, and Members, the Owners and Occupants of the Lots and Mortgagees, and a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

12.6 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion. The Board may, in its discretion, obtain a current appraisal of the full replacement value of the buildings and improvements in the Project, except for foundations, footings and masonry walls, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review. Such policies shall include a provision for at least ten (10) days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation, termination or substantial modification by any insurance carrier or provider.

12.7 **Qualifications of Insurance Carriers.** The Association shall use generally acceptable insurance carriers that are admitted to sell insurance in the State of California from which to purchase and maintain the coverage required herein to the extent such insurance is available at a reasonable premium cost.

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



12.9 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. The Board may also appoint an insurance trustee. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 13 herein. The Board is also authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

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

12.11 **Insurance Policy Deductibles.** The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association.

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

12.13 **Individual Casualty Insurance.** An Owner shall separately insure, at his or her own expense, his or her Lot and all real and personal property and original or subsequent Improvements on or in such Lot, and shall obtain and maintain such insurance as may be required by any Mortgagee of the Owner's Lot. All such insurance that is individually carried shall contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Lender of such Lot.

12.14 **Individual Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she believes is sufficient to protect such Owner from liability for the acts or omissions of such Owner. The Association is not obligated to obtain, and generally does not supply insurance coverage to protect Owners against such liabilities.

12.15 **FNMA and FHLMC Requirements.** The Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") so long as FNMA or FHLMC holds a Mortgage on or owns any Lot.

### ARTICLE 13 - DAMAGE OR DESTRUCTION

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

## ARTICLE 14 - EMINENT DOMAIN

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

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

14.2 **Taking of Common Area.** As used in this Article, the term "taking" shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Community. If a governmental agency proposes to take all or any part of the Common Area by eminent domain, the Association may sell or transfer all or any portion of the Common Area to the condemning authority. The sales price or conditions of sale shall be any amount or other terms deemed reasonable by the Board. The proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be paid to and belong to the Association, subject to the rights of Mortgagees. If necessary, the remaining portion of the Community shall be resurveyed to reflect such taking.

14.3 **Taking of a Lot.** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Mortgagees. Each Owner shall also have the exclusive right to claim any award made for such Owner's personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Community, including Membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

14.4 **Substantial Taking.** If there is a substantial taking of the Community (*i.e.* more than fifty percent), the Owners may vote to terminate the legal status of the Community, on a vote by at least a Majority of the total Voting Power of the Association.

## ARTICLE 15 - RIGHTS OF LENDERS

15.1 **Lender Rights.** Mortgagees of Lots in the Community shall be entitled to the rights and guarantees set forth in this Article.

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

15.3 **No Right of First Refusal.** This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association or Owners before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage,

(b) accept a deed (or assignment) in lieu of foreclosure following a default by a Mortgagor, or (c) sell or lease a Lot acquired by the Lender.

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

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

- 15.5.1 Seek, by act or omission, to abandon, or terminate the Community as a Common interest Development (except for abandonment or termination provided by Law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);
- 15.5.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the Common Area (if any), provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 15.5.3 Seek to abandon, partition, subdivide, encumber, sell or transfer, by act or omission, the Common Area, or any property owned, directly or indirectly, by the Association (provided however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).
- 15.5.4 Use hazard insurance proceeds for losses to any of the Community (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

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

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

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

- 15.8.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or the Lot insured or guaranteed by such Eligible Lender;
- 15.8.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- 15.8.3 Any proposed termination of the Community;
- 15.8.4 Any substantial damage to or destruction of a secured Lot or any portion of the Common Area;
- 15.8.5 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 15.8.6 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

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

15.10 ***Inspection of Documents, Books and Records.*** The Association shall make available, to Eligible Mortgage Holders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means open to inspection, upon request, during normal business hours or under other reasonable circumstances. The Association may charge a fee for this service which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items, unless otherwise permitted by law. The holders of fifty-one percent (51%) or more of First Mortgages shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any such financial statement so requested shall be furnished within a reasonable time following such request.

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

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

15.13 ***Lenders Furnishing Information.*** Each Owner authorizes the Mortgagee of a Mortgage on the Owner's Lot to furnish information to the Board concerning the status of the Mortgage and the loan that it secures.

15.14 **Financial Statement.** Any Eligible Lender shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at such Lender's expense, if one is not otherwise available.

15.15 **Conflicts.** If there is any inconsistency or conflict between the provisions of this Article and any other provision of this Declaration, the terms of this Article shall control.

## ARTICLE 16 - AMENDMENTS

16.1 **Owner Approval of Amendments.** [Civil Code §§1355 & 1363.03] This Declaration may be amended using the following procedure. The vote will be conducted by a secret ballot in accordance with the Civil Code §1363.03 and any other requirements of California law. The amendment must be approved by the affirmative vote of at least a majority of the Voting Power of all Members. Unless California law is amended to provide otherwise, the Association must send out ballots to all Members, and the voting must remain open for at least thirty days after the date the ballots are mailed to the Members. Since the ballots are all opened at once, and not until the polls close, there is no way to determine how the voting is split or when a majority of affirmative votes has been received. Thus, the inspectors of election may extend the voting beyond any initial deadline for the return of ballots, and the deadline may be extended periodically and automatically for additional periods of time until the inspector or inspectors or election decide to close the polls.

Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

A Declaration amendment becomes effective after (a) the approval of the required fraction of the Voting Power of Members has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Board for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been properly Recorded in San Diego County. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years.

Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of seventy-five percent (75%) or more of the Eligible Lenders encumbering Lots within the Properties (based upon one vote for each such Eligible Lender); provided, however, that to be eligible to vote, each such Eligible Lender must have informed the Association, in writing, of the information set forth in the definition of Eligible Lender in Exhibit A. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee:"

- 16.1.1 The fundamental purpose for which the project was created (such as a change from residential use to a different use).
- 16.1.2 Assessments, assessment liens and subordination thereof.
- 16.1.3 The reserve for repair and replacement of the Common Maintenance Area and the Common Area.
- 16.1.4 Property maintenance obligations.
- 16.1.5 Casualty and liability insurance.
- 16.1.6 Reconstruction in the event of damage or destruction.
- 16.1.7 Rights to use the Common Maintenance Area and the Common Area.
- 16.1.8 Annexation.

## 16.1.9 Voting.

16.1.10 Any provision which, by its terms, is specifically for the benefit of the First Mortgagees, or specifically confers rights on First Mortgagees.

Any substantive amendment to Articles 5, 6, 7, 8, or 9, each of which pertains to the Master Association, will require, in addition to other requirements hereof, the vote of sixty-six and two-thirds percent (66 2/3%) or more of the voting power of each class (Regular and Charter) of members of the Master Association.

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

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

- 16.3.1 To correct any factual, printing or grammatical error or omission in the Declaration without any vote of the Members.
- 16.3.2 To make any change in the Declaration required by a change in any applicable Law, which requires the Association, the Board or the Owners to conform their conduct with the terms of the Law. If the Board approves an amendment using the procedure in this Section 16.3, the amendment shall not be Recorded or Filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is required by Law.
- 16.3.3 To make any change in the Restated Declaration needed to comply with any requirements of an institutional Lender.

If the Board approves an amendment using the procedure in subparagraphs 16.3.2 and 16.3.3, the amendment shall not be Recorded or Filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is required by Law. An amendment shall be considered ratified, unless within thirty (30) days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent (20%) of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a Special Meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total Voting Power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the Special Meeting.

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

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

## ARTICLE 17 - THE PROPERTY

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

17.2 **Equitable Servitudes.** [Civil Code §1354] The covenants and restrictions set forth in this Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

17.3 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all easements, appurtenances and other interests as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's Membership interest in the Association, as provided in Section 3.3 herein. Any transfer that attempts to sever those component interests shall be void.

17.4 **Encroachment Easements.** The Owner of each Lot is hereby granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, errors in reconstruction or repair in accordance with plans and specifications approved by the Architectural Committee, settlement or shifting of any Building or other Structure, maintaining and repairing such encroachments, accepting water from the established drainage patterns and systems referenced herein or as otherwise allowed, or due to any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided however that, in no event, shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of any Owner. If any portion of a Structure in the Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Lots or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist. Each Owner agrees for himself and his heirs, successors, executors, administrators and assigns, and the Association agrees, for itself, its successors and assigns, that each will permit free access at reasonable times and upon reasonable notice by the party for whose benefit an easement has been created hereunder for the purpose of exercising his rights under this Section.

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

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

Nothing contained herein shall obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Area. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

17.6 ***Effect of Easements Granted.*** Each of the easements reserved or granted in this Article shall be covenants running with the land for the use and benefit of the Association or the Owners and their Lots, as the case may be, and shall be superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by any conveyance of property that is subject to this Declaration.

17.7 ***Easements Over Common Area.*** As described in Section 2.2.3, each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, and shall be subject to the right of the Association to regulate time and manner of use, and to perform its obligations under this Declaration.

#### ARTICLE 18 - GENERAL PROVISIONS

18.1 ***Term.*** The provisions of this Declaration shall continue in effect until December 31, 2065. Thereafter, it shall be automatically extended for successive periods of ten (10) years, until the Membership of the Association decides to terminate it. This Section shall not preclude amending the Declaration during the term of its existence.

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

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

18.4 ***Binding Effect.*** This Declaration, and any amendments thereto, and any valid action or directive made pursuant to it, shall inure to the benefit of and be binding and the Owners and their heirs, grantees, tenants, successors, and assigns. Every Owner and any other person who owns, occupies or acquires any right title or interest in or to any Lot or other portion of the Community consents and agrees to every provision contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Community.

18.5 ***Effect of Restatement.*** This Restated Declaration is made for the purposes set forth in the Recitals and elsewhere in this Declaration. The Association makes no representations or warranties, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to whether the terms set forth herein comply with the Laws applicable thereto.

18.6 ***Interpretation.*** The provisions of this Declaration and the Governing Documents shall be liberally construed and interpreted to effectuate the purpose of creating a uniform plan for the management and operation of a Common Interest Development and for the mutual benefit of all owners. Except as



provided in Section 9.20, all questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

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

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

18.9 **Document Delivery Methods for Rules, etc.** [Civil Code §1350.7] As provided in Civil Code §1350.7, the Association shall deliver Rules and, to the extent specified required by statute, other documents, by one or more of the following methods, or as otherwise provided under Civil Code §1350.7:

- 18.9.1 Personal delivery;
- 18.9.2 First-class mail, postage prepaid, addressed to a member at the address last shown on the books of the Association or otherwise provided by the Member. Delivery is deemed to be complete on deposit into the United States mail.
- 18.9.3 E-mail, facsimile, or other electronic means, if the recipient has agreed to that method of delivery. If a document is delivered by electronic means, delivery is complete at the time of transmission.
- 18.9.4 By publication in a periodical that is circulated primarily to members of the association.
- 18.9.5 If the association broadcasts television programming for the purpose of distributing information on Association business to its members, by inclusion in the programming.
- 18.9.6 A method of delivery provided in a recorded provision of the governing documents.
- 18.9.7 Any other method of delivery, provided that the recipient has agreed to that method of delivery.

A document may be included in or delivered with a billing statement, newsletter, or other document that is delivered by one of the methods provided in subdivision (b).

18.10 **Fair Housing.** Neither the Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any Person on the basis of race, color, sex, religion, ancestry, national origin, marital status or physical disability or any other

basis or characteristic prohibited by Law. However, this Association is a senior housing development and may discriminate on the basis of familial status to the extent provided by state and federal Law.

18.11 **Number, Gender and Headings; Code References.** As used in this Declaration, the singular shall include the plural, and the plural shall include the singular, unless the context requires the contrary. The use of either masculine, feminine or neuter gender shall include each other gender, as the context requires. The headings are not a part of this Declaration, and shall not affect the interpretation of any provision. All references to Code Sections, whether Civil Code, Corporations Code, Code of Civil Procedure, or others, shall be deemed to include references to subsequent code sections, if the referenced code is amended, renumbered or otherwise is changed.

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

18.13 **Annexation.** Additional residential property, Common Area and Common Maintenance Area may be annexed to the Community upon the written assent of two-thirds (2/3) of the Voting Power of the Members. Upon such approval, the owner or owners of the property wishing it to be annexed may File of record a Declaration of Annexation, which has been signed by the owner or owners of the property and representatives of the Board, which shall extend the scheme of this Declaration to such property.

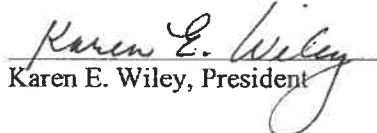
18.14 **Incorporation of Recitals and Exhibits.** All the recitals and exhibits referred to in this Declaration are deemed to be incorporated herein by reference.

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

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

**IN WITNESS WHEREOF**, the undersigned have executed this Amended and Restated Declaration of Restrictions and certified its approval on September 8, 2008.

**OAKS NORTH MARBELLA HOMEOWNERS ASSOCIATION,**  
a California nonprofit mutual benefit corporation

By:   
Karen E. Wiley, President

By:   
Marilyn D. Tipler, Secretary

State of California )  
County of San Diego )

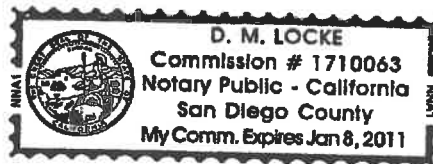
On September 8, 2008 before me, D. M. Locke, a Notary Public, personally appeared Karen E. Wiley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

(Seal)

D. M. Locke  
Notary Public



State of California )  
County of San Diego )

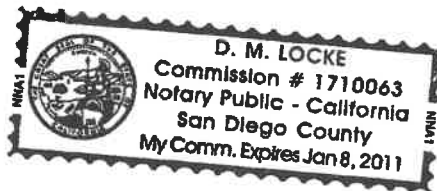
On September 8, 2008 before me, D. M. Locke, a Notary Public, personally appeared MARILYN D. TRUPHER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.

(Seal)

D. M. Locke  
Notary Public



**EXHIBIT A - DEFINITIONS**

1. **"Act"** [Civil Code §1350] means the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350 *et seq.*, as it may be amended from time to time.
2. **"Articles"** means the Articles of Incorporation of the Association, that were filed in the Office of the Secretary of State of the State of California on February 14, 1984, and any amendments thereto now existing or hereafter adopted.
3. **"Architectural Committee"** means the committee, if any, appointed by the Master Association Board to carry out the duties described in Article 8 of this Declaration and any other duties pertaining to the management and approval of architectural modifications within the Community.
3. **"Assessment"** means a charge against a particular Owner and the Owner's Lot, representing a portion of the Common Expenses or other charges that are to be paid by each Owner to the Association, as more fully set forth in Article 4. A **"Regular Assessment"** is the amount periodically assessed to each Owner throughout a given fiscal year to cover the budgeted operating expenses for that fiscal year, established as set forth in Section 4.3, 4.4 above. A **"Special Assessment"** is an amount levied against Owners, as described in Section 4.6 above when the Regular Assessments are insufficient to cover the financial needs of the Association.
4. **"Association"** [Civil Code §§1351(a) & 1353] means Oaks North Marbella Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a Common Interest Development.
5. **"Board"** means the Board of Directors of the Association.
6. **"Building"** means a residential structure that is part of a Lot.
7. **"Bylaws"** means the Bylaws of the Association and any duly adopted amendments thereto, which are incorporated herein by reference.
8. **"Capital Expenditure" or "Capital Improvement"** means the use of Association funds to construct or build an addition to the Community, where such use of funds is optional under the Governing Documents, rather than mandatory, and is not otherwise required by Law. For purposes of the Governing Documents, the maintenance, repair or replacement of Improvements within the Community that the Association is obligated to maintain, using materials of similar kind, or using materials that are required due either to changes in building or fire codes or to discontinued fabrication or unavailability, or using materials that have substantially similar cost over the useful life of the material shall not be considered a Capital Expenditure or Capital Improvement, notwithstanding that such expenditure or improvement may be considered a capital expenditure or capital improvement for tax purposes.
9. **"Common Area"** means those portions of the Community and all Improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of Lots A, B, and C of Marbella Unit No. 1, according to Map thereof No. 10789 Filed in the Office of the County Recorder of San Diego County on December 14, 1983, and Lots D and E of Marbella Unit No. 2, according to Map thereof No. 11087 Filed in the Office of the County Recorder of San Diego County on November 26, 1984.
10. **"Common Expenses"** [Civil Code §1365(a)(1)] means and includes the actual and estimated expenses of operating the Community, and any reasonable Reserve for such purposes as found and

determined by the Board and all sums designated Common Expenses by or pursuant to the Governing Documents.

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

12. **"Common Maintenance Area"** means those portions of Lots over which an easement for common landscaping maintenance are conveyed to the Association. The Common Maintenance Area easements include the following:

Landscaping Easement Recorded February 24, 1984 as Doc. No. 84-067905 affecting Lot 9 of Oaks North Villas Unit No. 2, Map No. 9412, Recorded January 9, 1979;

Common Maintenance Area Easement - Phase 1, Recorded February 24, 1984 as Doc. No. 84-372131 affecting Lots 3 through 6, inclusive and Lots 8 through 28, inclusive (0.058 acres);

Common Maintenance Area Easement - Phase 2, Recorded October 29, 1986 as Doc. No. 86-491377 affecting Lot 63 (0.009 acres);

Common Maintenance Area Easement - Phase 2, Recorded October 29, 1986 as Doc. No. 86-491378 affecting Lot 64 (0.009 acres);

Common Maintenance Area Easement - Phase 2, Recorded October 29, 1986 as Doc. No. 86-491379 affecting Lot 52 (0.007 acres);

Quitclaim Deed Recorded October 29, 1986 as Doc. No. 86-491380 affecting Lot 52 (0.022 acres);

Quitclaim Deed Recorded October 29, 1986 as Doc. No. 86-491381 affecting Lot 53 (0.022 acres);

Common Maintenance Area Easement - Phase 2, Recorded October 29, 1986 as Doc. No. 86-491384 affecting Lot 53 (0.007 acres);

Common Maintenance Area Easement - Phase 6, Recorded December 2, 1986 as Doc. No. 86-555913 affecting Lots 106 and 107 (0.004 acres);

Common Maintenance Area Easement - Phase 7, Recorded December 2, 1986 as Doc. No. 86-555914 affecting Lots 92 and 93 (0.004 acres);

Common Maintenance Area Easement - Phase 2, Recorded October 29, 1986 as Doc. No. 86-491379 and Re-recorded in January, 1987 as Doc. No. 87-000814 affecting Lot 52 (0.007 acres);

Entry Wall and Common Maintenance Area Easement, Recorded November 21, 1988 as Doc. No. 88-599016 affecting Lots 13 and 14 (0.032 acres).

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

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

15. **"Declarant"** means the original Developer of the Community.

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

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

18. **"Dwelling"** means a residential structure or structures, including any enclosed yard, and any other Improvements located on a Lot.

19. **"Electronic Transmission"** [Corp. Code §§20 & 21] means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

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

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

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

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

24. **"Lot"** See "Separate Interest."

25. **"Master Association"** means Oaks North Community Center, Inc., as described more fully in Article 5. The provisions in Articles 5, 6, 7, 8 and 9 pertain to the functions of the Master Association. The term "Charter Member," when used in Section 16.1, refers to the original developer of the Master Association as defined in the Master Association's governing documents, and the term "Regular Member" refers to homeowner members of the Master Association.

26. **"Majority"** means more than half of the number from which majority is calculated.

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

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

29. **"Mortgage"** means a mortgage or deed of trust encumbering a Lot or any other portion of the Community. "First Mortgage" means a Mortgage that has priority over all other Mortgages and liens encumbering the same Lot or other portions of the Community.

30. **"Mortgagee" or "Lender"** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any institutional guarantor or insurer of a Mortgage. "Institutional Mortgagee" means a Mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state Law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Veterans Administration ("VA"), Federal Housing Administration ("FHA"), Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Government National Mortgage Association ("GNMA"). **"First Mortgagee"** means a Mortgagee that has priority over all other Mortgagees or holders of Mortgages or liens encumbering the

same Lot or other portions of the Community. The term "**Beneficiary**" shall be synonymous with the term "Mortgagee."

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

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

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

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

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

36. "**Phase**" means a portion of real property that was either part of the original Community or that was added later by annexation. The development and sale of the Lots occurred in eleven (11) Phases as set forth below.

Phase 1 consisted of Lots 1 through 12, inclusive, Lots 15 through 20, inclusive, and Lots 68-78, inclusive, of Map No. 10789;

Phase 2 consisted of Lots 21 through 25, inclusive, and Lots 58 through 67, inclusive, of Map No. 10789;

Phase 3 consisted of Lots 26 through 28, inclusive, and Lots 46 through 57, inclusive, of Map No. 10789;

Phase 4 consisted of Lots 29 through 45, inclusive, of Map No. 10789;

Phase 5 consisted of Common Area Lots A, B and C of Map No. 10789; Common Area Lots D and E of Map No. 11087; and Lots 113 through 127, inclusive, of Map No. 11087;

Phase 6 consisted of Lots 100 through 112, inclusive, and Lots 128 through 131, inclusive, of Map No. 11087;

Phase 7 consisted of Lots 86 through 99, inclusive, and Lots 132 through 135, inclusive, of Map No. 11087;

Phase 8 consisted of Lots 79 through 85, inclusive, and Lots 136 through 142, inclusive, of Map No. 11087;

Phase 9 consisted of Lots 143 through 156, inclusive, of Map No. 11087;

Phase 10 consisted of Lots 157 through 165, inclusive, and Lots 178 through 183, inclusive, of Map No. 11087; and

Phase 11 consisted of Lots 13 and 14 of Map No. 10789 and 166 through 177, inclusive, of Map No. 11087.

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

38. **"Recreation Area"** means all real property owned by the Master Association for the common use and enjoyment of its members. The Recreation Area includes, but may not be limited to:

Lot 5 of Oaks North Unit No. 1, according to Map thereof No. 7186 Recorded in the Office of the County Recorder, San Diego County, California on January 25, 1972;

Lot 10 of Oaks North Unit No. 2, according to Map thereof No. 7196 Recorded in the Office of the County Recorder, San Diego County, California on February 4, 1972;

Lot 99 and 100 of Oaks North Unit No. 3, according to Map thereof No. 7739 Recorded in the Office of the County Recorder, San Diego County, California on September 11, 1973.

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

40. **"Resident"** means any Person who resides, temporarily or permanently, in any Lot. The Board may enact Rules for determining when someone ceases to be guest or invitee and will be treated as a Resident.

41. **"Rule Change"** [Civil Code §1357.100(b)] means the adoption, amendment, or repeal of an Operating Rule by the Board.

42. **"Rules and Regulations" or "Rules" or "Operating Rules"** [Civil Code §1357.100] means any regulations adopted by the Board pursuant to Section 3.6 herein that apply generally to the management and operation of the Community or the conduct of the business and affairs of the Association.

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

44. **"Structure."** See **"Improvement" or "Structure"** above.

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



**EXHIBIT B - CERTIFICATE OF ASSOCIATION PRESIDENT AND SECRETARY**

We, Karen E. Wiley and Marilyn D. Tipler, declare and state as follows:

1. We certify that we are the President and Secretary, respectively of Oaks North Marbella Homeowners Association, a California nonprofit mutual benefit corporation (hereafter "Association").

2. This certification is executed as provided in California Civil Code Section 1355 to certify that the amendment requirements of the Declaration have been met.

3. We certify that (a) there are currently one hundred eighty-three (183) residential Lots that are subject to the Declaration, (b) that there is a total voting power of one hundred eighty-three (183), one (1) for each residential Lot in the Association, and (c) that there are no residential Lots whose voting rights have been suspended.

4. We certify that, based on the facts recited in Paragraph 3 above and according to Article XVI, Section 3 of the Declaration, as amended, the Declaration may be amended by an instrument in writing approved by the affirmative vote of at least a majority of the Voting Power of all Members, and no amendment material to a Mortgagee may be made to the Declaration without the prior written consent of seventy-five percent (75%) or more of the Mortgagees of First Mortgages encumbering Lots within the Community (based upon one vote for each such Mortgagee); provided, however, that to be eligible to vote, each such Mortgagee must have informed the Association, in writing, of its appropriate address.

5. We certify that there are no Mortgagees of First Mortgages encumbering Lots within the Community who have informed the Association in writing of their addresses, thus, no vote of any Mortgagee is required, and at least ninety-two (92) affirmative votes of the Voting Power of Members are needed to amend the Declaration.

6. We certify that, as of the date the ballots were counted, the election inspector reported that the following represents the votes cast for and against this 2008 Amended and Restated Declaration by the Voting Power of the Association.

<b>Voting Power Cast For and Against the Amendment</b>	
<b><u>For</u></b>	<b><u>Against</u></b>
116	8

7. Since these totals reflect approval by at least ~~one hundred~~ ninety-two (92) affirmative votes, we certify that the 2008 Amended and Restated Declaration was approved.

On behalf of the Association, we declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct. Executed on September 8, 2008 at San Diego, California.

By:

Karen E. Wiley  
Karen E. Wiley, President

By:

Marilyn D. Tipler  
Marilyn D. Tipler, Secretary