

FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,

CONDITIONS AND RESTRICTIONS

FOR

ANACAPA VIEW BEACH HOMES ASSOCIATION

**Pursuant to Subdivision (b) of Section 12956.1 of the Government Code, the following notice is printed in 14-point boldface type:**

**NOTICE**

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, 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 by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. 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.**

**FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
ANACAPA VIEW BEACH HOMES ASSOCIATION,  
A Planned Development  
Port Hueneme, California**

**Table of Contents**

	<b><u>Page No.</u></b>
<b>Recitals</b> .....	1
<b>Article I - Definitions</b> .....	2
<b>Article II - Owners’ Property Rights</b> .....	4
Section 1 Owners’ Easements of Enjoyment.....	4
Section 2 Extent of Owners’ Easements.....	4
Section 3 Delegation of Use .....	5
Section 4 Easements for Encroachment.....	5
Section 5 Easements for Utilities.....	6
Section 6 Easements for Vehicular Traffic.....	7
Section 7 Easements for Maintenance .....	7
Section 8 Waiver of Use .....	7
<b>Article III - Owners’ Association</b> .....	7
Section 1 Membership .....	7
Section 2 Voting Rules .....	7
Section 3 Transfer.....	7
Section 4 Duty to Notify Association of Sales and Delegations .....	8
Section 5 Prohibition on Further Subdivision, Duplexes and Lot Splitting .....	8
Section 6 Prohibition on Separate Sale of Accessory Dwelling Unit.....	8
Section 7 Rule-Making Power .....	8
<b>Article IV - Powers and Duties of Association</b> .....	9
<b>Article V - Assessments</b> .....	14
Section 1 Creation of the Lien and Personal Obligation of Assessment .....	14
Section 2 Purpose of Regular, Special and Emergency Assessments .....	14
Section 3 Regular Assessments .....	14
Section 4 Special Assessments .....	15
Section 5 Special Individual Assessments.....	16
Section 6 Emergency Assessments.....	16
Section 7 Maintenance of Assessment Funds.....	17

Section 8	No Offsets .....	17
<b>Article VI - Effect of Non-Payment of Assessments, Remedies of the Association .....</b>		<b>17</b>
Section 1	Collection of Delinquent Assessments; Enforcement of Liens; Foreclosure of Liens .....	17
Section 2	Effect of Nonpayment of Assessments .....	18
Section 3	Application of Payments; Receipt for Payments .....	19
Section 4	Owner Right to Dispute Debt .....	19
Section 5	Payment Plans .....	19
Section 6	Recordation of Lien .....	19
Section 7	Lien; Enforcement of Lien.....	19
Section 8	Special Individual Assessments; Limitations .....	20
Section 9	Lien Property .....	20
Section 10	Enforcement of Lien .....	20
Section 11	Lien Recorded in Error .....	20
Section 12	Assignment of Rents .....	20
Section 13	Waiver of Exemptions .....	21
Section 14	Prohibition on Avoidance of Obligations .....	21
Section 15	Termination of Obligations.....	21
<b>Article VII - Leasing/Renting of Dwellings .....</b>		<b>21</b>
Section 1	Rentals Subject to Governing Documents .....	21
Section 2	Discipline of Tenants .....	22
Section 3	Eviction of Tenants .....	22
<b>Article VIII - Use Restrictions .....</b>		<b>23</b>
Section 1	Occupancy Restriction .....	23
Section 2	Residential Use of Lots and Dwellings Only.....	23
Section 3	Noxious or Offensive Activities .....	23
Section 4	For Sale, For Rent, For Lease, and For Exchange Signs .....	23
Section 5	Noncommercial Signs, Etc.....	23
Section 6	Registered Vehicles Only on Common Area Private Streets.....	24
Section 7	Vehicle Parking and Repairs.....	24
Section 8	Animals .....	24
Section 9	Rubbish, Trash, Garbage and Other Waste Materials.....	24
Section 10	Maximum Height of Fences, Hedges, Walls, and Other Dividing Instrumentalities .....	25
Section 11	No Residential Use of Outbuildings, Etc.....	25
Section 12	No Alterations of Common Area Without Written Consent of Association.....	25
Section 13	Radio Stations, Shortwave Operators, Exterior Radio Antenna,	

	Exterior Television Antennas and Satellite Dish Antennas.....	25
Section 14	Air Conditioning Units .....	25
Section 15	No Oil Drilling and Mining Operations.....	25
Section 16	Maintenance of Lots .....	25
Section 17	View Protection .....	26
Section 18	Tree Removal from Common Area .....	26
Section 19	Solar Energy Systems .....	26
Section 20	Electric Vehicle Charging Stations.....	26
<b>Article IX - Architectural Review .....</b>		<b>26</b>
Section 1	Approval .....	26
Section 2	Powers.....	26
Section 3	Architectural Review Committee .....	27
Section 4	Procedure for Requesting an Exterior Modification.....	27
Section 5	Inspection of Work .....	27
Section 6	Review Fees.....	28
Section 7	Enforcement.....	28
Section 8	Variances.....	28
Section 9	Limitation on Liability.....	28
Section 10	Compliance With Governmental Regulations .....	28
Section 11	No Waiver of Future Approvals .....	28
<b>Article X - Obligation to Maintain, Repair and Rebuild .....</b>		<b>29</b>
Section 1	Maintenance by Association.....	29
Section 2	Maintenance by Owner .....	29
Section 3	Damage and Destruction Affecting Residences; Duty to Rebuild.....	29
Section 4	Variance in Exterior Appearance and Design.....	29
Section 5	Time Limitation .....	29
<b>Article XI - Damage or Destruction to Common Area.....</b>		<b>30</b>
<b>Article XII - Covenant Against Partition .....</b>		<b>31</b>
<b>Article XIII - Mortgage Protection .....</b>		<b>31</b>
<b>Article XIV - General Provisions.....</b>		<b>34</b>
Section 1	Enforcement.....	34
Section 2	Severability .....	35
Section 3	Term.....	35
Section 4	Construction.....	36
Section 5	Singular Includes Plural.....	36
Section 6	Amendments .....	36

Section 7	Encroachments .....	36
Section 8	Notices .....	36
Section 9	Attorney’s Fees .....	36
Section 10	Property Exemption .....	37
Section 11	Cumulative Remedies .....	37
Section 12	Failure of Mortgagee to Respond .....	37
<b>Exhibit A - Maintenance Matrix</b>	.....	<b>40</b>

FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
ANACAPA VIEW BEACH HOMES ASSOCIATION  
A PLANNED DEVELOPMENT

RECITALS

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by ANACAPA VIEW BEACH HOMES ASSOCIATION, the community association for that certain real property located in the City of Port Hueneme, County of Ventura, State of California, described as follows:

Lots 1 through 43, inclusive, and Lots 1-A, 1-B, 1-C, and 1-D of Tract 2471-1 in the City of Port Hueneme, County of Ventura, State of California, as shown on a Map recorded in Book 68, Page 44 of Miscellaneous Records of said County.

and

Lots 44 through 85, inclusive, and Lots 1A, 1B, 1C, and 1E, inclusive of Tract 2471-2 as shown on a Map recorded in Book 73, Pages 1 to 4, inclusive, of Miscellaneous Records in the Office of the County Recorder for said County, (hereinafter referred to as the "Property").

The properties described above have been developed by the construction of single-family residential structures and common areas.

The properties described above are subject to that certain Declaration of Restrictions for Anacapa View Beach Homes recorded March 18, 1977, as Document Number 29080 at Page 4796, Pages 282, et seq. and a Declaration of Annexation for Anacapa View Beach Homes recorded on March 14, 1978, as Document Number 24766 at Page 396, et seq. in the Official Records of Ventura County. This First Amended and Restated Declaration for Anacapa View Beach Homes amends and replaces the original Declaration of Restrictions and the Declaration of Annexation in full.

# ARTICLE I

## DEFINITIONS

Section 1. “Association” shall mean and refer to ANACAPA VIEW BEACH HOMES ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 2. “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract vendees and lessees, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “Properties” and/or to the “Project” shall mean and refer to the certain real property described as follows:

Lots 1 through 43, inclusive, and Lots 1-A, 1-B, 1-C, and 1-D of Tract 2471-1 in the City of Port Hueneme, County of Ventura, State of California, as shown on a Map recorded in Book 68, Page 44 of Miscellaneous Records of said County.

and

Lots 44 through 85, inclusive, and Lots 1A, 1B, 1C, and 1E, inclusive of Tract 2471-2 as shown on a Map recorded in Book 73, Pages 1 to 4, inclusive, of Miscellaneous Records in the Office of the County Recorder for said County, (hereinafter referred to as the "Property").

Section 4. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Lots 1, 1-A, 1-B, 1-C and 1-D of Tract 2471-1 and Lots 1A, 1B, 1C, and 1E of Tract 2471-2 in the City of Port Hueneme, County of Ventura, State of California, as shown on the Maps identified above.

Section 5. “Lot” shall mean and refer to, unless otherwise specifically stated herein, all Lots within the Properties, but shall exclude the Common Area described herein.

Section 6. “Mortgage” shall mean a mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by assignment) given as security for the repayment of a loan or other financing which encumbers a Lot, made in good faith and for value.

Section 7. “Mortgagee” shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; “Mortgagor” shall mean a person or entity who

mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the Trustor of a Deed of Trust.

Section 8. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 9. “Residential Structure” and/or “Dwelling” shall mean and refer to the individual dwelling which is designed and intended for use and occupancy as a single-family residence and which occupies a separate Lot in the Project, and to all other buildings or other structures located on said Lot.

Section 10. “City” shall mean and refer to the City of Port Hueneme.

Section 11. “Deed of Trust” shall mean and be synonymous with the word “Mortgage”, and the same may be used interchangeably with the same meaning; and likewise, the word “Trustor” shall be synonymous with the word “Mortgagor”; and the word “Beneficiary” shall be synonymous with the word “Mortgagee”.

Section 12. “Assessment” shall mean and refer to any Regular, Special, Special Individual Assessment, or Emergency Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of this Declaration.

Section 13. “Governing Documents” is a collective term that means and refers to this Declaration and to the Articles of Incorporation, the Bylaws, and the Association Rules.

Section 14. “Membership” refers to the legal relationship and status of being a Member of the Association, and an entitlement to the rights and privileges appurtenant thereto as defined herein and in the Bylaws. Membership rights and privileges may be limited or suspended as provided in the Governing Documents and by applicable law. “Membership” may also refer to the Members collectively.

Section 15. “Rules” or “Association Rules” means any and all written operating rules, regulations, architectural standards or guidelines and other policies lawfully adopted by the Board, all as the same may be in effect from time to time.

Section 16. “Declaration” or “Declaration of Covenants, Conditions and Restrictions” means this instrument, as it may be amended or restated from time to time.

Section 17. “Architectural Review Committee” or “ARC” refers to any committee established to govern alterations and improvements to the Project pursuant to this Declaration, or to the Board, if serving in that capacity.

## ARTICLE II

### OWNERS' PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of access, use and enjoyment in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Easements. The rights and easements of access, use and enjoyment set forth in Section 1 hereinabove shall be subject to the following:

- (a) The right of the Association to reasonably limit the number of guests of Owners who may use any Common Area recreational facilities;
- (b) The right of the Association to establish and enforce reasonable rules and regulations pertaining to the use of the Common Area and the recreational facilities, if any, thereon;
- (c) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated on the Common Area;
- (d) The right of the Association, in accordance with its Articles, Bylaws, and this Declaration, to borrow money and pledge assessments as collateral with the assent of two-thirds (2/3) of the Members for the purpose of improving the Common Area and recreational facilities, if any, and in aid thereof, to mortgage the Common Area; provided, however, that the rights of such mortgagee shall be subordinate to the rights of the owners;
- (e) The right of the Association to assess monetary penalties against an Owner and/or suspend said Owner's right to use the recreational facilities, if any, for the period of during which any assessment against his or her Lot remains unpaid and delinquent after notice and hearing given and had, and for a period not to exceed thirty (30) days after notice and hearing given and had for any single infraction of the Governing Documents;
- (f) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless (1) an instrument approving said dedication or transfer is signed by Owners representing two-thirds (2/3) of the voting power of each class of Members and recorded in the office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the

Common Area shall not require the prior approval of the Members of the Association;

- (g) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;
- (h) The right of the Association to perform and exercise its duties and powers as set forth herein;
- (i) Other rights of the Association, the Architectural Review Committee, the Board of Directors and the Owners with respect to the Common Area as may be provided for in this Declaration; and
- (j) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by the City or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

Section 3. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his or her right of use and enjoyment to the Common Area and recreational facilities, if any, to the Members of his or her family or his or her tenants who reside on his or her property, and to their guests. In the event of a rental of an Owner's Dwelling, the Owner shall be deemed to have assigned his or her right of use and enjoyment to the Common Area and recreational facilities to the tenant(s) and to their guests. In such circumstance, the Owner shall have no right of use and enjoyment to the Common Area and recreational facilities during the period when the Owner's Dwelling is rented unless the Owner also resides in the Dwelling or another Dwelling in the Project.

Section 4. Easements for Encroachment.

- (a) There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and as between adjacent Lots due to the unwillful placements or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of the restrictions) to a distance of not more than five (5) feet, as measured from a point on the common boundary between each Lot and the adjacent portion of the Common Area or between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

- (b) Owners shall obtain prior written approval from the Association and must obtain all required building permits, if any are required, from the City prior to commencing improvements to the exteriors of their respective Dwelling and easements.

Section 5. Easements for Utilities. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines and other facilities shall be governed by the following:

- (a) It shall be the duty of each respective utility company to maintain its utility facilities and connection on any Lot; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections;
- (b) Wherever sanitary sewer, water or gas connections, television cable, electricity or telephone lines are installed within the Project and said connections, cables and/or lines lie in or upon a Lot in the Project owned by someone other than the Owner of the Lot served by said connections, cables and/or lines, the Owner of the Lot served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefore, to enter upon the Lot or to have the utility companies enter upon the Lot in or upon which said connection, cables and/or lines lie, to repair, replace and generally maintain same whenever it shall be necessary to do so;
- (c) Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project, and said connections, cables and/or lines serve more than one Lot, the Owner of each Lot served by said connections cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Lot;
- (d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and cables and/or lines, or the sharing of connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners;
- (e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project, and as may be hereafter required or needed to service the Project, are hereby reserved by the Association, together with the right to grant and transfer the same.

Section 6. Easements for Vehicular Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, each and every Owner shall have a nonexclusive easement appurtenant for vehicular traffic over all private streets, if any, within the Project.

Section 7. Easements for Maintenance. For purposes of performing the exterior maintenance of the Common Area authorized herein, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter upon any Lot at reasonable hours on any day. An Owner shall permit the Owner or Owners of an adjoining Lot or Lots, or his, her, or their representatives to enter upon his, her or their Lot for the purpose of repairing and/or maintaining the exterior walls of his, her or their residential structures, provided, that request for entry is reasonably made in advance and that such entry is made at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate.

Section 8. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof for any reason whatsoever, including but not limited to waiver of the use and enjoyment of the Common Area and facilities thereon, if any, or abandonment of his Lot.

### ARTICLE III

#### OWNERS' ASSOCIATION

Section 1. Membership. Each Lot within the Project includes a fee simple interest in the Lot; a Membership in the Association; and any exclusive or nonexclusive easement(s) appurtenant to such Lot over the Common Area as described in this Declaration, the Subdivision Map, and the deed to the Lot. The fee title to all such elements of the respective Lot shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to a Lot. The foregoing is not intended to include persons or entities who hold an interest in a Lot in the Project merely as security for the performance of an obligation.

Section 2. Voting Rights. Only Members of the Association shall be entitled to vote. Members shall have one (1) vote for each Lot. When more than one person owns a single Lot, all Owners shall be Members of the Association. However, the vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner (or Owners) casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of any other Owners of said Lot.

Section 3. Transfer. The Association Membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Lot. In the event of such sale or encumbrance, the Association Membership may only be transferred, pledged, or alienated to a bona fide purchaser of the Lot, or to the mortgagee (or third-party

purchaser) of such Lot upon a foreclosure sale. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

Section 4. Duty to Notify Association of Sales and Delegations. Each Owner shall notify the Association in writing of any pending or proposed sale of a Lot, including the identity of any escrow company, proposed purchaser, or contract purchaser for the Lot. Each Owner or contract purchaser shall also notify the Association of the names of any person(s) to whom such Owner or contract purchaser has delegated any rights to use and enjoy the Property, and the relationship that each such person bears to the Owner or contract purchaser.

Section 5. Prohibition on Further Subdivision, Duplexes and Lot Splitting. No Lot may be subdivided, split or divided into two or more parcels and only one Dwelling is permitted on a parcel. A Dwelling shall not consist of more than one residential unit. This Section shall not preclude an Accessory Dwelling Unit from being constructed on the Lot with the prior written approval of the Association. No Accessory Dwelling Unit shall be constructed, installed, modified or altered without the prior written approval of the Association. For purposes of this Section, an "Accessory Dwelling Unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. Accessory Dwelling Units shall not be sold separate from the sale of the Dwelling on the Lot. An Owner must apply to the Board of Directors or, if applicable, the Architectural Review Committee for approval to install, construct or modify an Accessory Dwelling Unit. The Association may adopt additional reasonable regulations consistent with applicable law regarding the construction, installation or modification of Accessory Dwelling Units.

Section 6. Prohibition on Separate Sale of Accessory Dwelling Unit. An Accessory Dwelling Unit (defined by Section 5 above) shall not be separately sold or conveyed from the Lot. Owners shall not record a condominium plan to create a common interest development required to effectuate the sale of an Accessory Dwelling Unit.

Section 7. Rule-Making Power. The Board may, from time to time, propose, enact, amend, or repeal reasonable Rules and Regulations pursuant to the procedures set forth in Civil Code Sections 4340-4370 or any comparable superseding statute. Such Rules may concern, but are not limited to: (i) the management and use of the Common Area by Owners, tenants, residents, and invitees; (ii) use of a Lot, including pets, conduct, leasing/rental of Lots and any aesthetic or architectural standards, to be known as the Architectural and Landscape Guidelines; (iii) discipline, including any procedure for conducting disciplinary proceedings and schedule(s) of monetary or other penalties for violation of the Governing Documents; (iv) standards and procedures for resolution of Assessment disputes, including for delinquent Assessment payment plans; (v) restrictions on the use and parking of vehicles within the Project; and any other matter within the authority of the Association as provided in the Governing Documents.

## ARTICLE IV

### POWERS AND DUTIES OF ASSOCIATION

Section 1. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project as provided herein, and the affairs of the Association shall be managed by a Board of Directors as more particularly set forth in the Bylaws of the Association. Directors shall be elected as provided in the Bylaws.

Section 2. The Association shall have the right and power to do all things necessary for the management and operation of the Project. Subject to the provisions of the Articles of Incorporation, the Bylaws of the Association, and these Restrictions, the powers of the Association shall include, but shall not necessarily be limited to, the specific acts hereinafter enumerated.

Section 3. The Association shall possess, perform, and execute the following powers and duties on behalf of all Owners in the Project:

- (a) Provide water, sewer, gas, electricity, garbage and trash collection, and other necessary utility services for the Common Area, and, if not separately metered, for the Lots;
- (b) Provide:
  - (1) A policy or policies of fire insurance with extended coverage endorsement, for the full insurance replacement value of the Common Area;
  - (2) A policy or policies of general liability insurance covering the Association, the Board of Directors, the Manager (as provided for hereinbelow), and the agents and employees of each of the foregoing, against any liability to the public or to any Owner, his invitees and/or tenants, arising from or incident to the ownership, occupation, use, maintenance, and/or repair of the Common Area, and if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured; limits of liability shall be set by the Association and such limits and coverage shall be reviewed at least annually by the Association and increased or decreased in its discretion. The limits of such insurance shall not be less than five hundred thousand dollars (\$500,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence, or in such other minimum amount as required by applicable law;
  - (3) Workers' compensation insurance to the extent necessary to comply with any applicable laws;

- (4) Fidelity bonds or insurance, in an amount equal to at least three (3) months operating expenses plus reserves. Any such policies or bonds must include coverage for computer fraud and fund transfers fraud, pursuant to Civil Code Section 5806, or comparable superseding statute, and contain an endorsement that includes as covered individuals under said policies or bonds any non-compensated Board members and also the Association's Manager.
  - (5) Directors and Officers Liability Insurance covering prior acts in order to ensure that past Board members are protected for decisions made during their term of service. The policy shall name as insureds not only the current Board members but also volunteer committee members, if such insurance is available. The limits of such insurance shall not be less than five hundred thousand dollars (\$500,000.00), or in such other minimum amount as required by applicable law to protect volunteer officers or directors from personal liability in excess of the insurance coverage. If commercially available for a reasonable price, such Directors and Officers Liability coverage shall include an endorsement extending coverage for the acts, errors, and omissions committed by the Association's Manager.
  - (6) Such other policies of insurance as the Association may deem appropriate; and,
  - (7) The Association shall be deemed the trustee for the Owners in connection with any insurance proceeds paid to the Association under any of the aforesaid policies, and shall have full power to receive such funds on behalf of the Owners, Mortgagees, and beneficiaries of Deeds of Trust, as their interests appear, and to deal therewith.
- (c) Contract for the services of a person or firm (hereinafter referred to as the "Manager") to manage and supervise the use and operation of the Common Area in the event that the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Association/Government National Mortgage Association ("FNMA/GNMA") shall insure any mortgage or deed of trust, on a Lot in the Project, but if neither FHLMC nor FNMA/GNMA shall insure any such mortgage or deed of trust, the Association may, at its option, retain a Manager as it deems necessary and proper. A Manager shall have, or shall obtain within a time limit set by the Board of Directors, a minimum of the basic level of certification for a community association manager offered by Community Associations Institute, California Association of Community Managers, or another provider of community association manager certification that is approved by the Board of Directors.
- (d) Paint, repair, and maintain in a neat, safe, attractive, sanitary, and orderly condition, all portions of the Common Area as defined and described in this

Declaration, including, but without limiting the generality of the foregoing, any and all buildings, equipment, landscaping, and furnishings in and upon the Common Area;

- (e) In addition to all other provisions set forth herein respecting the maintenance of the Common Area, maintain all storm drains, sanitary sewers, private streets, if any, utilities, and open spaces within the Common Area for which the Association is responsible to maintain in a condition comparable to the condition initially approved by the City;
- (f) Pay all real and personal property taxes and assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to the Owners;
- (g) Obtain any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;
- (h) Cause financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association as set forth in the Bylaws.
- (j) Assume and pay out of the assessments provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties and any other powers and duties which the Association may assume as provided for in Section 4 hereinbelow.

Section 4. The Association, acting at its option and by and through its Board of Directors, may assume, perform, and execute the following powers and duties on behalf of all Owners in the Project.

- (a) In addition to the duties and powers of the Association respecting the retention of a Manager for the Common Area as set forth in Section 3 hereinabove, provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Common Area, regardless of whether such other personnel are employed directly by the Association or otherwise;
- (b) Remove or replace any part of a patio, fence or other structure that extends into the Common Area under authority of an easement when access to a utility line underneath such patio, fence or structure is requested by any utility company, provided, however, that the cost shall be charged to the Owner of the Lot involved if said Owner caused the patio, fence or other structure to be placed in the Common Area;

- (c) Incur any liability or pay any costs or expenses for a single Lot or Owner thereof, provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specifically assessed to the Owner of such Lot; provided further, however, that nothing herein shall permit the Association to assess the Owners for any new improvements or additions to the Common Area except as specifically provided in this Declaration; and
- (d) Provide any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments, which in the opinion of the Board of Directors shall be necessary or proper for the operation of the Common Area, for the benefit of the Owners, or for the enforcement of these Restrictions.

Section 5. No contract entered into by the Association or the Board of Directors acting for and on behalf of the Association may run for a term longer than one (1) year, except with the vote or written assent of a majority of the voting power of the Association residing in Members.

Section 6. In the event that the Association shall delegate any or all of its duties, powers, or functions to any person, corporation, or firm to act as Manager, neither the Association nor the Members of its Board of Directors shall be liable for any fraud, bad faith, gross negligence or willful misconduct by the Manager of any such duty, power, or function so delegated.

Section 7. The Association, any person authorized by the Association, or any Owner may enter any Lot in the event of any emergency involving potential threats to health and welfare of any person or danger to life or property. Such entry shall be made with as little inconvenience to the Owner of such lot as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense. In case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Areas, the Association's rights of entry hereunder shall be immediate and the entry and repair may be performed whether or not the Owner, tenant, or any occupant of the Lot is present.

Section 8. The Association, or any person authorized by the Association, shall have the right to enter, upon reasonable notice, any Lot to affect necessary repairs which the Owner has failed to perform or which are necessary in connection with repairs to the Common Area or an adjoining Lot.

Section 9. The Board of Directors of the Association shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association residing in Members:

- (1) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one year with the following exception:

- (a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;
  - (b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission Provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; and,
  - (c) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.
- (2) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year; or,
  - (3) Selling during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 10. The Association is authorized and empowered to grant such licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, and other public utility purposes over those portions of the Common Area upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation, and enjoyment of the Common Area or for the preservation of the health, safety, convenience, and welfare of the Owners.

Section 11. Other than as provided in Article X relating to restoration of damaged improvements, the Association may construct new improvements or additions to the Common Area of the Project or demolish existing improvements, provided that the written consent or vote of a majority of Owners must approve aggregate expenditures for Capital Improvements to the Common Areas in any fiscal year in excess of ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year. "Capital Improvement" means any material or substantial discretionary addition or change to the Common Areas or significant alteration to the appearance of the Project. A Capital Improvement does not include additions or upgrades to Common Area materials which are necessary or prudent to comply with building or safety codes, or to prevent property damage or personal injury, or to reduce operating or maintenance costs for the Common Areas or to otherwise comply with reserve component repairs or replacements.

## ARTICLE V

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) Regular Assessments or charges, (2) Special Assessments for any action or undertaking on behalf of the Association including, but not limited to capital improvements, such assessments to be established and collected as hereinbelow provided. The Regular and Special Assessments, together with interest, late charges, reasonable fees and costs of collection, and reasonable attorney's fees for the collection thereof, shall be a debt of the Owner of the Lot at the time the Assessment or other sums are levied. 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.

Section 2. Purpose of Regular, Special and Emergency Assessments: Levy and Collection. The Regular, Special and Emergency Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Project and to maintain the Common Area. The Association, by and through its Board of Directors, shall levy and collect assessments from the Owner of each Lot in the Project in an amount sufficient to cover all of the costs and expenses incurred by the Association in connection with the performance and execution of its powers and duties set forth in Article IV hereinabove and the Articles of Incorporation.

Section 3. Regular Assessments.

(a) The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a secret ballot election of the Association. For purposes of this section, "quorum" means more than fifty percent (50%) of the Members;

(b) The Board shall provide individual notice pursuant to Civil Code Section 4040 or comparable superseding statute, notice of any increase or decrease in the amount of the Regular or Special Assessments for the next succeeding fiscal year no less than thirty (30) days and no more than sixty (60) days prior to the increased assessment becoming due;

(c) If, for any reason, the Board of Directors fails to make an estimate of the common expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made for that year,

shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Regular Assessment shall be payable on the regular payment dates established by the Association;

(d) The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month. Installments of Regular Assessments shall be delinquent if not paid by the 15th day of the month in which the Assessment is due;

(e) The Regular Assessment shall be allocated among, assessed against, and charged to each Owner so that each Lot bears an equal (1/84<sup>th</sup>) share of the total Regular Assessment;

(f) The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations, as defined in Civil Code Section 5610, or any successor code section.

#### Section 4. Special Assessments.

(a) Subject to the membership approval requirements set forth in subparagraph (1) below, the Board shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(1) If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder;

(2) The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Area facilities);

(3) The Board may levy Special Assessments to repay disaster loans or loans obtained for the purpose of repairing Common Area facilities or financing litigation.

(b) No Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is/are levied shall be made without the vote or written assent of Owners, constituting a quorum, casting a majority of the votes at a secret ballot election of the Association. For purposes of this section, "quorum" means more than fifty percent (50%) of the Members;

(c) When levied by the Board or approved by the Owners as provided above, the Special Assessment shall be divided among, assessed against, and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments;

(d) Special Assessments for purposes described in this Section shall be due as a separate debt of the Owner and shall be a lien against his or her Lot.

#### Section 5. Special Individual Assessments.

(a) In addition to the Special Assessments levied against all Owners in accordance with Section 4, above, the Board may impose Special Individual Assessments against an Owner in any of the following circumstances, after the owner has been given the notice and hearing rights to which the Owner is entitled pursuant to Civil Code Section 5855 or comparable superseding statute:

(1) In the event that any damage to, or destruction of, any portion of the Common Area or any component for which the Association is responsible to maintain or repair is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment;

(2) In the event that the Association incurs any costs or expenses, to accomplish (A) any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete after fifteen (15) days written notice or (B) to otherwise bring the Owner, into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, accounting fees, management fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(b) Once a Special Individual Assessment has been levied against an Owner for any reason described, notice of such Special Individual Assessment shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment, or within such other time period as the Board may determine.

#### Section 6. Emergency Assessments.

(a) The restrictions on the Board’s ability to impose Regular or Special assessments as defined in Sections 3 and 4 above shall not apply to assessments imposed to address emergency situations, also known as “emergency assessments.” For purposes of this Section 6 an emergency situation is any of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the Common Area which the Association is obligated to maintain where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Area which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the annual budget, provided that, prior to the imposition or collection of an Assessment under this subparagraph (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board’s resolution shall be distributed to the Members together with the Notice of Assessment.

Section 7. Maintenance of Assessment Funds. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board which has offices located within the State of California. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments insured by the FDIC and in a manner consistent with the investment standards normally observed by trustees.

Section 8. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that (i) the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Areas; or (iii) any construction or maintenance performed or not performed by the Association shall in any way postpone Assessments or entitle a Member to claim any such offset or reduction.

## ARTICLE VI

### EFFECT OF NON-PAYMENT OF ASSESSMENTS

#### REMEDIES OF THE ASSOCIATION

Section 1. Collection of Delinquent Assessments; Enforcement of Liens; Foreclosure of Liens. If any installment payment of a Regular Assessment or lump sum or installment payment

of any Special Assessment, Special Individual Assessment, or Emergency Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and shall incur a late charge for any delinquent Assessments not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater. In addition, if any such Assessment is not paid within thirty (30) days after the same becomes due, such Assessment shall bear interest at the rate of twelve percent (12%) per annum beginning thirty (30) days after the due date until the same is paid.

Section 2. Effect of Nonpayment of Assessments. As more particularly provided in California Civil Code sections 5660 through 5725 or comparable superseding statutes, the amount of any delinquent Regular, Special, or Emergency Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association. At least thirty (30) days prior to recording an assessment lien, the Association shall notify the Owner in writing by certified mail of the following:

(a) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to Section 5205 of the Civil Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

“IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”;

(b) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any;

(c) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association;

(d) The right to request a meeting with the Board as provided by subsection (e) below;

(e) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the association's "meet and confer" program required by Civil Code Sections 5900-5920;

(f) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code Sections 5925-5965 before the Association may initiate

foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

Section 3. Application of Payments; Receipt for Payments. Any payments made by the Owner of a Lot toward the debt set forth as required in subsection (b) of Section 2 above shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

Section 4. Owner Right to Dispute Debt. An Owner may dispute the debt notice pursuant to subsection (b) of Section 2 above by submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the notice.

Section 5. Payment Plans. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to subsection (b) of Section 2 above. The Association shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board of Directors meeting within that period, in which case the Board of Directors may designate a committee of one or more Board members to meet with the Owner.

Section 6. Recordation of Lien. The decision to record a lien for delinquent Assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of the meeting.

Section 7. Lien; Enforcement of Lien. The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with this Declaration shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the County of Ventura a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with the Declaration, a legal description of the Owner's Lot, the name of the record Owner of the Owner's interest in the Lot against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in Civil Code Sections 5700 to 5710 (or comparable superseding statute), the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any Board Member or the Association's authorized agent, and mailed in the manner set forth in Civil Code Section 2925b, by certified mail, to all record Owners of the Owner's Lot no later than ten (10) calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the County Recorder of Ventura

County a lien release or notice of rescission and provide the Owner of the Lot a copy of the lien release or notice that the delinquent assessment has been satisfied;

Section 8. Special Individual Assessments; Limitations. A Special Individual Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas for which the Owner or the Owner's guests or tenants were responsible may become a lien against the Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924b, and 2924c of the Civil Code. A monetary penalty imposed by the Association as a disciplinary measure for failure of the Owner to comply with the Declaration or Rules and Regulations, except for late payments, may not be characterized nor treated as an assessment that may become a lien against the Owner's Lot enforceable by the sale of the Lot under Sections 2924, 2924b, and 2924c of the Civil Code;

Section 9. Lien Priority. A lien created pursuant to this Article shall be prior to all other liens recorded subsequent to the notice of assessment, except to the extent otherwise provided in this Declaration.

Section 10. Enforcement of Lien. After the expiration of thirty (30) days following the recording of a lien created by Section 2 above, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a of the Civil Code; provided, however, the Association may not foreclose the lien by nonjudicial or judicial foreclosure if the amount of the delinquent assessments is less than one thousand eight hundred dollars (\$1,800.00), not including any accelerated Assessments, late charges, fees and costs of collection, and attorneys' fees, or interest, or if such Assessment secured by the lien are less than twelve (12) months delinquent. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c of the Civil Code. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d of the Civil Code. Nothing in this subdivision or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits the Association from filing a court action against the Owners of a Lot to recover sums for which a lien was created or prohibits the Association from taking a deed in lieu of foreclosure.

Section 11. Lien Recorded in Error. If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien shall, within twenty-one (21) calendar days, record or cause to be recorded in the office of the County Recorder of Ventura County a lien release or notice of rescission and provide the Owners of the Lot with a Declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

Section 12. Assignment of Rents. In the event of a default by the Owner in the payment of Assessments, late charges, fines, and collection costs, the Owner grants, conveys, and confers to the Association the right, power and authority to collect the rents from the tenant and assigns such rents to the Association to be retained by the Association to pay such delinquent sums, which may include current Assessments. This assignment shall not become effective until after the Association has provided the Owner with notice and hearing rights pursuant to Civil Code Section 5855 or comparable superseding statute. After complying with such notice and hearing procedures, the Association shall give written notice to the tenant that all future rental payments shall be paid

directly to the Association until the delinquent Assessment(s), fines, and collection costs are paid in full and, at the option of the Board, the tenant may thereafter be required to deduct from rental payments paid to the Owner, the amount of the Assessment(s) due for each month and to pay that amount directly to the Association to be credited to the Owner's account.

A. Prior to any default in the payment of assessments, late charges, and fines, the Owner shall retain the right, power and authority to collect and retain all rents collected from the Lot.

B. The Association may exercise its right to collect rents through its Board, Manager, agents, attorneys, or through a receiver to be appointed by the Court.

The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee.

Section 13. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

Section 14. Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

Section 15. Termination of Obligations. Upon the conveyance, sale, assignment or other bona fide transfer of a Lot to a new Owner and full payment of all outstanding sums due to the Association, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association Membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease. Any Assessment which has been approved by the Board or the Owners which becomes due before the transfer of title to a new Owner shall remain the responsibility of the current Owner and shall be paid at the close of escrow, unless the Board determines that the new Owner may assume the Assessment pursuant to a written Assumption Agreement.

## ARTICLE VII

### LEASING/RENTING OF DWELLINGS

Section 1. Rentals Subject to Governing Documents. Any rental, lease or use of a Dwelling shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant, lessee or other occupant with a current copy of all Governing Documents and

shall be responsible for compliance by the Owner's tenant, lessee or other occupant with all of the provisions of the Governing Documents during the tenant's/lessee's/occupant's occupancy and use of the Dwelling. The Association may request and receive a copy of the lease or rental agreement. The Association may request the names of all tenants occupying the Dwelling.

Section 2. Discipline of Tenants. Subject to Section 3 below, in the event that any tenant fails to honor the provisions of any Governing Document, the Association may, but shall not be obligated, to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the Owner's and tenant's privileges to use any Common Area or recreational facility, or the imposition of fines and penalties against the Owner of the Dwelling. Any fine or penalty levied pursuant to this section may be enforced by legal action but shall not be enforced by nonjudicial foreclosure of a lien. If a fine or penalty is imposed as a result of the conduct of a tenant, the Owner shall be personally obligated for the payment of such fine or penalty in the event the Owner of the Unit fails to pay the fine or penalty prior to the delinquency date.

Section 3. Eviction of Tenants.

(a) Association's Right to Evict Tenants. Whether or not such right is stated in any lease or rental agreement, every Owner who rents his or her Dwelling automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees incurred prior to litigation with respect to attempts to enforce the CC&Rs and during litigation, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment.

(b) Legal Basis for Association's Eviction of Tenants. The Association's right to maintain an eviction action hereunder is derived from applicable law and shall only arise if the tenant's conduct causes damage to or destruction of Common Areas, improvements or other property of the Association, or the property of other Owners or residents, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents, or if such tenant has occupied the premises without the Owner's permission and consent or without a written Lease.

(c) Due Process Procedure. The Board, prior to making any decision on the possible eviction of a tenant or tenants, shall provide written notice and a hearing to the Owner(s) regarding the possible eviction of the tenant(s). Such written notice and hearing shall satisfy the procedures set forth in Section 5855 of the California Civil Code or any successor statute(s).

(d) Association's Right of Action Against Owner to Compel Owner to Evict Tenant. If the Association determines that it will not exercise its power to evict a tenant due to the tenant causing a nuisance or damage to the Common Area or any Owner's Dwelling, the Association shall have the right to bring an action against the Owner to compel the

Owner to evict the tenant. In any action, whether for injunctive relief, damages, or both, brought because of any alleged breach or default of these leasing provisions or any other provisions of the Governing Documents by any Owner, his/her tenants, family members, guests, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

## ARTICLE VIII

### USE RESTRICTIONS

The Property shall be occupied and used as follows:

Section 1. Occupancy Restriction. The Lots and Dwellings are restricted to Residential Use except as provided herein. For purposes of this section, "Residential Use" means occupancy and use of a Lot for single family dwelling purposes, and recreational and other purposes incidental to such purposes, in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

Section 2. Residential Use of Lots and Dwellings Only. No part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes, except that home offices may be maintained in a Dwelling, provided that such home offices do not result in additional foot or automobile traffic to the Owner's Lot and Dwelling. No restrictions contained herein shall be interpreted to prohibit any Owner or tenant from maintaining a home office, nor from conducting any other activities within the Lot otherwise compatible with Residential Use and the provisions of this Declaration which are permitted under applicable zoning laws, and health ordinances, resolutions, Rules and Regulations of the County of Ventura without the necessity of a special use permit or governmental authorization, unless other residents are disturbed by an unreasonable number of visitors to the Property, excessive noise, or additional traffic and provided further there shall be no signs advertising their home office, profession or other activity allowed by this Section.

Section 3. Noxious or Offensive Activities. No noxious or offensive activity shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or residents.

Section 4. For Sale, For Rent, For Lease, and For Exchange Signs. Owners may display one (1) sign on their Lot which advertises the Lot as "For Sale," "For Rent," "For Lease," or "For Exchange." Such signs may be reasonably located in plain view of the public. The sign shall be no more than eighteen (18) inches by twenty-four (24) inches in total size.

Section 5. Noncommercial Signs, Etc. Noncommercial signs, posters, flags, or banners may be posted or displayed on or in an Owner's Lot, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law. For purposes

of this section, a noncommercial sign, poster, flag, or banner may be made of paper, cardboard, cloth, plastic, or fabric and may be posted or displayed from the window, door, balcony, or outside wall of the Lot, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces. Noncommercial signs and posters may not be more than nine (9) square feet in size and noncommercial flags or banners may not be more than fifteen (15) square feet in size.

Section 6. Registered Vehicles Only on Common Area Private Streets. Only properly registered vehicles may use the Common Area private streets.

Section 7. Vehicle Parking and Repairs. No Owner of a Lot shall park, store or keep any vehicle except wholly within the garage or appurtenant driveway designated therefore. No Owner shall park, store or keep any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), any recreational vehicle (camper unit, motorhome, trailer, boat trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length or any vehicle other than a private passenger vehicle in the Project except wholly within an enclosed garage. The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation. In addition, the following parking and vehicle restrictions shall apply within the Property:

A. The Board shall have the authority to make reasonable rules and restrictions regarding parking, use, washing, and maintenance of vehicles within the Property as may be deemed prudent and appropriate. The Board shall have the authority to tow, at the Owner's expense, any vehicle parked or stored in violation of any restriction in this Section or any parking or vehicle Rules adopted by the Board. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

B. Garages shall be used only for the purpose of parking vehicles and equipment and storing an Owner's household goods, and shall not be converted for living or recreational activities without the prior written approval of the Board.

C. No Owner of a Lot shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area, including the garage spaces, except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility.

Section 8. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats and other household pets may be kept on Lots subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose. No person who possesses a dog or other animal shall permit, allow, or cause the animal to run, stray, be uncontrolled or in any manner be in, upon, or at large upon any part of the Common Area, unless it is restrained by a substantial leash and under the control of a person responsible for and capable of controlling the animal.

Section 9. Rubbish, Trash, Garbage and Other Waste Materials. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in

sanitary containers located in appropriate areas screened and concealed from view. Refuse containers may be set out for a reasonable period of time before and after scheduled trash pick-up times.

Section 10. Maximum Height of Fences, Hedges, Walls, and Other Dividing Instrumentalities. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot except as the Board and City may vary, or exceed said height or location of any fence in accordance with its architectural plans.

Section 11. No Residential Use of Outbuildings, Etc. No temporary outbuilding, basement, tent, shack, garage, trailer, camper, motorhome or shed or temporary building of any kind shall be used as a residence either temporarily or permanently, except as may be allowed by California law and local ordinances for accessory dwelling units and junior accessory dwelling units. No accessory dwelling unit or junior accessory dwelling unit shall be constructed, installed, modified or altered without the prior written approval of the Association.

Section 12. No Alterations of Common Area Without Written Consent of Association. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board of Directors.

Section 13. Radio Stations, Shortwave Operators, Exterior Radio Antenna, Exterior Television Antennas and Satellite Dish Antennas. No radio station or shortwave operators of any kind shall operate from any Lot or Dwelling. No exterior television or radio antenna of any kind shall be constructed or erected on any Lot or Dwelling except as permitted by law. Satellite dish antennas may be installed on an Owner's Lot and/or Dwelling in accordance with federal and state law and pursuant to reasonable rules and regulations adopted by the Association that are consistent with said federal and state laws.

Section 14. Air Conditioning Units. No air-conditioning unit, or any portion thereof, may be installed upon or on the roof of any Dwelling within this Project. No air-conditioning unit, or any portion thereof, may be installed elsewhere on or in the exterior of any Dwelling without the prior written consent of the Architectural Review Committee.

Section 15. No Oil Drilling and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. Maintenance of Lots. All Lots and any improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish debris thereon. In the event any such Lot or improvement thereon is not so maintained, the Association shall have the right, but not the obligation, through its agents and employees, to enter thereon for the purpose of

maintenance, restoration or repair, the cost of which shall be levied against the Lot and its Owner as a Special Individual Assessment.

Section 17. View Protection. No building, fence, wall, balcony, hedge, landscaping, or other object shall be constructed, erected, installed, planted, or maintained on any Lot or Common Area, that substantially interferes with the view from another Lot as determined in the sole and absolute discretion of the Board of Directors.

Section 18. Tree Removal from Common Area. All tree removals from the Common Area require the prior written approval of the Board of Directors and a permit from the City, if required by local ordinance.

Section 19. Solar Energy Systems. As provided in California Civil Code Sections 714 and 714.1, or comparable superseding statutes, Owners may install and maintain solar energy systems on their Lots and Dwellings, subject to reasonable rules and regulations imposed by the Association and with the prior written permission of the Architectural Review Committee.

Section 20. Electric Vehicle Charging Station. Notwithstanding anything contained in this Declaration to the contrary, any provision in the governing documents that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an Owner's designated parking space, including, but not limited to, a garage parking space, or an EV-dedicated TOU meter, or is in conflict with the provisions of Civil Code Sections 4745 and 4745.1 (or comparable superseding statute) are void and unenforceable. The Board may adopt reasonable rules and regulations on electric vehicle charging stations that are in compliance with the provisions of Civil Code Sections 4745 and 4745.1 (or comparable superseding statute).

## ARTICLE IX

### ARCHITECTURAL REVIEW

Section 1. Approval. No building, fence, wall or other structure, or any exterior addition to or alteration thereof, including but not limited to painting, fences or patio covers, shall be commenced, erected or maintained upon the Project until all conditions which may be imposed by the City have been satisfied and until the plans and specification showing the nature, kind, color, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee provided for in Section 3 hereof. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location in writing within forty-five (45) days after said plans and specifications have been submitted to it, approval by said Committee will not be required and the application will be deemed approved unless the delay is a result of the request for additional information regarding the request or for additional plans and specifications.

Section 2. Powers. Approval of said plans and specifications may be withheld because of noncompliance with any of the specific conditions, covenants and restrictions contained in this

Declaration or the Architectural and Landscape Guidelines (“Guidelines”) adopted by the Board; because of the reasonable dissatisfaction of the Committee and nonconformance with said Guidelines with the plan, color scheme, finish, design, proportions, architecture, shape, dimensions, style and appropriateness of the proposed structures and altered structures, materials to be used therein, pitch or type of roof proposed to be placed thereon, or because of the reasonable dissatisfaction of the Committee with all or other matters or things which, in the reasonable judgment of the Committee, will render the proposed improvement inharmonious or out of keeping with the general plan of improvement for the Project or with the improvements erected on neighboring Lots. The approval of any such work shall be deemed conditional upon the commencement of such work within ninety (90) days after such approval has been specified by the Committee at the time of its approval. Thereafter, work thereon must be prosecuted diligently to completion within a reasonable time and in any event before the expiration of any such period as may be specified by the Committee. The Committee may grant written extensions of any deadlines for completion of the work. Permission for the work shall be automatically revoked at the expiration of the initial ninety (90) days or at the expiration of such written extensions as the Committee may grant.

Section 3. Architectural Review Committee. The Board of Directors shall appoint an Architectural Review Committee consisting of three (3), five (5), or seven (7) members as determined by the Board from time to time. The Architectural Review Committee is hereby authorized with the rights and powers set forth in this Article. In the event of the failure or inability to act of any member of the Committee, the remaining members may recommend a successor who shall serve for the remainder of the term of the member he or she replaces if appointed to the Committee by the Board. All members appointed to the Architectural Review Committee by the Board of Directors shall be from the Membership of the Association. No member of the Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Committee.

Section 4. Procedure for Requesting an Exterior Modification. The procedure that a Member must follow to obtain the consent for an exterior modification to his/her/their home shall be set forth in the Architectural and Landscape Guidelines (“Guidelines”) adopted by the Board. Said rules shall comply with California Civil Code Section 4765 or any successor statute.

Section 5. Inspection of Work.

- (a) Upon the completion of any construction or reconstruction of any improvements, or completion of any alteration or refinishing of the exterior of any improvement, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Committee. Within sixty (60) days after receipt of such notice, the Committee, or its duly authorized representative, may inspect such completed work to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60)

day period, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance.

- (b) If upon the expiration of thirty (30) days from the date the Owner is notified of such noncompliance, the Committee shall then report such failure to the Board of Directors who shall be authorized to take such action against said Owner as is deemed appropriate, including the filing of a suit declaring said noncomplying structure to be a nuisance and for abatement thereof.

Section 6. Review Fees. The Board may establish a schedule of fees which may be charged against the submitting party to defray any costs incurred by the Association including architectural and/or engineering consultant fees, legal fees, and expenses for reviewing plans.

Section 7. Enforcement. In the event of an architectural violation, the Board shall have the right to suspend the right to use Common Area facilities, and levy fines against the Member after notice and the opportunity to be heard is provided. The Board may also pursue such legal remedies as the Board deems appropriate, including, but not limited to, an action for a temporary restraining order and/or injunction to compel the Member to bring its Lot into compliance with the Governing Documents, including architectural decisions made by the Committee pursuant to this Article. The Association shall have no duty to identify architectural violations, and any failure of the Association, its Board, its officers, its Manager or any agent or employee to detect and identify an architectural violation shall not operate to waive the Association's rights or remedies with respect to any such violation, unless (1) the Board or Manager shall have been notified in writing of the violation and (2) no remedial or enforcement action shall have been taken by the Association within five (5) years following such notice, except as otherwise provided by law.

Section 8. Variances. The Board, in its sole discretion, shall be entitled to allow reasonable variances from these requirements in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

Section 9. Limitation on Liability. Neither the Association, Board, Committee, if any, nor any member thereof, shall be liable to any Member (or tenant) for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance in connection with the approval or disapproval of any plans, drawings and specifications, whether or not defective, or the construction or performance of any improvement, whether or not pursuant to approved plans, drawings or specifications.

Section 10. Compliance With Governmental Regulations. Review and approval of any requests, proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Member who desires to construct, install or modify the improvement.

Section 11. No Waiver of Future Approvals. The approval of the Committee or Board in any matter described in this Article shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar matter subsequently submitted for approval.

## ARTICLE X

### OBLIGATION TO MAINTAIN, REPAIR AND REBUILD

Section 1. Maintenance by Association. The Association shall maintain, repair, and replace all portions of the Common Area pursuant to the Maintenance Matrix attached hereto and incorporated herein by reference as Exhibit "A."

Section 2. Maintenance by Owner. Subject to the Provisions of this Declaration regarding exterior maintenance and Architectural Review Committee approval, each Owner shall, at his or her sole cost and expense, maintain his or her Lot and all residential structures located thereon, keeping the same in neat, clean, safe, attractive, sanitary and orderly condition and making all structural repairs as they may be required. The Owner's maintenance responsibility is further detailed in the Maintenance Matrix attached as Exhibit "A."

Section 3. Damage and Destruction Affecting Residences; Duty to Rebuild. If all or any portion of a residential structure or other portion of the Lot is damaged or destroyed by fire or other casualty, including, but not limited to, tree root damage from trees wherever located, it shall be the duty of the Owner of said Lot to rebuild, repair or reconstruct said structure or other portion of the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 4. Variance in Exterior Appearance and Design. In the event any residential structure in the Project shall be destroyed or damaged by fire or other casualty, the Owner thereof may apply for approval to the Architectural Review Committee for reconstruction, rebuilding or repair of same in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in harmony of exterior design with the neighboring Lots in the Project. Failure of the Architectural Review Committee to act within forty-five (45) days after receipt of such a request in writing coupled with the drawings and plot plans showing full and complete nature of the proposed change shall constitute approval thereof, unless the delay is caused by a reasonable request from the Committee for additional information or plans.

Section 5. Time Limitation. The Owner or Owners of any damaged residential structure shall be obligated to proceed with all due diligence hereunder and commence reconstruction within one hundred and twenty (120) days after the damage occurs and complete reconstruction within three hundred (300) days after damage occurs, unless an extension of time is granted in writing by the Board of Directors.

## ARTICLE XI

### DAMAGE OR DESTRUCTION TO COMMON AREA

Section 1. Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner:

(a) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed;

(b) If the insurance proceeds are within Five Thousand Dollars (\$5,000.00) or less of being sufficient to effect total restoration to the Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the between the insurance proceeds and the actual cost shall be levied as a Special Assessment equally against each of the Owners in the Project;

(c) If the insurance proceeds are insufficient by more than Five Thousand Dollars (\$5,000) to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether (a) to rebuild and restore the Common Area in substantially the same condition as it existed prior to being damaged, and to raise the necessary funds over the insurance proceeds levying equal assessments against all Lots, (b) to rebuild and restore the Common Area in a way which utilizes all available insurance proceeds and an additional amount not in excess of Five Thousand Dollars (\$5,000.00) and which is assessable equally to all Owners, but which is less expensive than rebuilding and restoring the Common Area to substantially the same condition as it existed prior to being damaged, or (c) to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Lots as their interests may appear. Provided, however, that unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, utilities, parks, open spaces and trails, if any, at least to the extent said areas were accepted initially by the City in lieu of payment of fees due pursuant to the Quimby Act;

(d) If reconstruction or restoration has not actually commenced within one (1) year from the date of any damage to which this Article is applicable, then the covenant against partition included in this Declaration shall terminate and be of no further force and effect.

## ARTICLE XII

### COVENANT AGAINST PARTITION

No Owner shall have any right to partition, subdivide, or sever his or her Lot from the Project, except as such partition may be provided for in provisions of this Declaration relating to destruction or condemnation, or as otherwise provided by applicable law. Nothing herein shall prevent partition of a co-tenancy in a Lot.

## ARTICLE XIII

### MORTGAGE PROTECTION

Section 1. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC and FNMA/GNMA (and other lenders and investors) to participate in the financing of the sale of Lots within the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

- (a) Each holder of a first mortgage or first deed of trust encumbering any Lot is entitled to timely written notification from the Association of any default by the mortgagor of such lot in the performance of such mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association which is not cured within sixty (60) days;
- (b) Each holder of a first mortgage or first deed of trust encumbering any Lot which comes into possession of such Lot pursuant to the remedies provided in such mortgage or deed of trust, or by foreclosure of such mortgage or deed of trust, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of such Lot, including, but not limited to, restrictions on the age of the occupants of such Lot and restrictions on the posting of signs pertaining to the sale or rental of such Lot;
- (c) Each holder of a first mortgage or deed of trust encumbering any Lot or third party foreclosure purchaser which comes into possession of the Lot pursuant to the remedies provided in such mortgage or deed of trust, shall take title to such Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such holder came into possession of the Lot. The lien assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust placed upon the property subject to assessment prior to the recordation of the assessment lien; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such property from liability for

any assessments thereafter becoming due, nor from the lien of any such subsequent assessment;

(d) Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgaged owned) of Lots have given their prior written approval, the Association or the Owners shall not be entitled to:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots within the Project; provided, however, that the granting of easements for public utilities or for other public purposes consistent with intended use of such property by the Association and the Owners shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, assessments, dues or other charges which may be levied against the Owners or of allocating the distributions of insurance proceeds or condemnation awards which may be paid to the Owners;

(3) by act or omission change, waive or abandon any scheme of regulations, or the enforcement thereof, pertaining to the architectural design or the exterior appearance of the residential structures, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and planting in the Project;

(4) by act of omission fail to maintain a policy or policies of fire insurance with extended coverage for the full insurance replacement value of the Common Area;

(5) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of same, except as provided by statute in case of substantial loss to the Common Area; and

(6) effectuate any decision of the Association to terminate professional management and assume self-management of the Project.

(e) First mortgagees shall have the right to examine the books and records of the Association;

(f) An adequate reserve fund for replacement of the Common Area, as determined by the Board of Directors in its sole and absolute discretion, must be established and must be funded by regular monthly payments rather than by special assessments;

(g) All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lot and not to the Project as a whole;

(h) In the event of substantial damage or destruction of any Lot or any part of the Common Area, the institutional holder of any first mortgage on a Lot shall be entitled to timely written notice of any such damage or destruction and further, that no provision in this Declaration shall be interpreted to entitle the Owner of the lot or any other party to priority over such institutional holder with respect to the distribution to such Lot of any insurance proceeds;

(i) Any agreement for professional management of a Project shall provide that the management contract may be terminated without cause or payment of a termination fee on ninety (90) days written notice, and the term of any such contract does not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods;

(j) First mortgagees of Lots within the Project may pay taxes or other charges which are in default and which may or have become a charge against any of 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 property and the first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association;

(k) None of the provisions in this Declaration, the Articles of Incorporation or Bylaws of the Association, shall be interpreted to give the Owner of any Lot within the Project, or any other party, priority over any rights of first mortgagees of Lots within the Project pursuant to their mortgages in the event of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of the Common Area;

(l) The Association shall give FHLMC, FNMA/GNMA notice (c/o Servicer at Servicer's address) in writing of any loss to, or taking of, the Common Area if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00);

(m) The Association shall, upon the request of any institutional holder of a first mortgage on a Lot in the Project, (1) give written notice of all meetings of the Association and permit the lender to designate a representative to attend all such meetings, and (2) transmit to such lender an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project;

(n) If any Lot or portion thereof, or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a Lot shall be entitled to timely written notice of

any such proceeding or proposed acquisition, and no provision in this Declaration shall be shall be interpreted to entitle the Owner of a Lot or any other party to priority over such institutional holder with respect to the distribution to such Lot of the proceeds of any awards of settlement.

Section 2. No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Association, or any Owner in the Project, may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, however that any such violation shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said property or any part thereof. Said covenants shall be binding upon and effective against any Owner of said property, or portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

## ARTICLE XIV

### GENERAL PROVISIONS

#### Section 1. Enforcement.

- (a) The City, the Association or the Owner of any Lot in the Project, shall have the right to enforce by proceedings at law or in equity all of the covenants and provisions now or hereafter imposed by this Declaration and the Bylaws, respectively, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation;
- (b) The result of every act or omission whereby any of the covenants contained in this Declaration or the provisions of the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by the law or equity against a nuisance, either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest;
- (c) The remedies herein provided for breach of the covenants contained in this Declaration or the provisions of the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive;
- (d) The failure of the Association to enforce any of the covenants contained in this Declaration or the provisions of the Bylaws shall not constitute a waiver of the right to enforce the same thereafter;

(e) A breach of the covenants contained in this Declaration or of the provisions of the Bylaws shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any Lot provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise;

(f) The Association shall have the right and power to assess monetary penalties against a Member and/or suspend said Member's right to use the recreational facilities, if any, for the period during which any assessment against his or her Lot remains unpaid after notice and hearing regulations published by the Association.

When the Board is to meet to consider or impose discipline upon a Member, or to impose a monetary charge as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities caused by a Member or the Member's guests or tenants, the Board shall notify the Member in writing, by either personal delivery or by first-class mail at least ten (10) calendar days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which the Member may be disciplined or the nature of the damage to the Common Area and facilities for which a monetary charge may be imposed, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session.

If the Board imposes discipline on the Member or imposes a monetary charge upon the Member for damage to the Common Area and facilities, the Board shall provide the Member a written notification of the decision, by either personal delivery or by individual delivery pursuant to Civil Code section 4040 within fourteen (14) calendar days following the action.

A disciplinary action or the imposition of a monetary charge for damage to the Common Area shall not be effective against a Member unless the Board fulfills the requirements of this section;

(g) In addition to the above general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon the Project for the purpose of enforcing the California Vehicle Code and any City Ordinances, and is hereby granted an easement over the Project for that purpose.

Section 2. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 3. Term. The covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and

assigns, for a term of fifty (50) years from the date this First Amended and Restated Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Project and for the maintenance of said Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Amendments. This Declaration may be amended only by an affirmative vote of more than fifty percent (50%) of Owners; provided, however, that the provisions of this Declaration shall not be amended without the written consent of either the City Director of Planning and/or City Attorney to the extent such provisions relate to the original conditions placed on the Project by the City, or to the extent such provisions affect the City's rights herein.

Section 7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail or as otherwise required or permitted by law. If delivery is made by registered or certified mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Lot of such person if no address has been given to the Association. If such notice is so sent by regular mail, delivery is deemed to be complete on deposit into the United States mail. Such address may be changed from time to time by notice in writing to the Association.

Section 9. Attorney's Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney with respect to the defaults involved, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorney's fees, regardless of whether legal proceedings are instituted. In any action brought because of any alleged breach or default of any Owner or tenant of any Lot, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable. An Owner shall be responsible for attorneys' fees and costs incurred by the Association to cure

the defaults respecting his or her Lot, including those of his or her tenant(s) or of any guest, invitee, agent, or contractor thereof.

Section 10. Property Exemption. All public property within the Project shall be exempt from the provisions of this Declaration.

Section 11. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or tenant or others to perform or observe any provision of this Declaration.

Section 12. Failure of Mortgagee to Respond. Any Mortgagee and/or governmental agency who receives a written request from the Board to respond or consent to any action shall be deemed to have approved such action, unless the Association receives a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### CERTIFICATE OF ADOPTION

We, the undersigned, hereby certify as follows:

We are the President and Secretary, respectively, of the Anacapa View Beach Homes Association.

We are authorized to execute this Certificate of Adoption of this First Amended and Restated Declaration of Covenants, Conditions and Restrictions.

The foregoing is a true copy of the First Amended and Restated Declaration of Covenants, Conditions and Restrictions which have been properly approved by the required percentage of the Owners of the Anacapa View Beach Homes Association in accordance with California Civil Code Section 4270.

We declare, under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Dated: \_\_\_\_\_

By, \_\_\_\_\_, President

Dated: \_\_\_\_\_

By, \_\_\_\_\_, Secretary





**EXHIBIT “A”**

## EXHIBIT A

### MAINTENANCE MATRIX

#### Owner Responsibilities

All structures on the Owner's Lot:  
paint, maintain, repair, and replace  
as necessary.

All landscaping on Owner's Lot:  
maintain and replace as necessary.

All utility lines serving the Owner's Lot:  
maintain, repair, and replace as necessary.

Driveway on Owner's Lot: maintain,  
repair, and replace as necessary.

Subsurface of land on Owner's Lot:  
maintain, repair, and replace as necessary.

#### Association Responsibilities

All structures in the Common Area, e.g.,  
pool and pool cabana - paint, maintain,  
and replace as necessary.

All Common Area landscaping and  
irrigation - maintain and replace as  
necessary.

All Common Area private streets,  
maintain, repair, and replace as necessary.

Entry gates, maintain, repair, and replace  
as necessary.

Subsurface of land on Common Area,  
maintain, repair, and replace as  
necessary.

#### **Common Area:**

- a. Fences**
- b. Security systems**
- c. Lighting**
- d. Hardscape**
- e. Utilities: water, gas, sewer,  
electricity, trash, solar, wifi and  
cable**
- f. Softscape**
- g. Signage**