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***First Restated Declaration of Covenants,
Conditions and Restrictions***

for

**NORMANDY BY THE SEA
COMMUNITY ASSOCIATION**

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THIS FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of this ____ day of _____, 2009, by the Normandy By The Sea Community Association, with reference to the following:

RECITALS

- A. The Normandy By The Sea Community Association, a California nonprofit mutual benefit corporation (the “HOA” and also referred to herein as the “Association”) is the governing organization for the common interest development commonly known as Normandy By The Sea (the “Development”) located in the City of San Diego, County of San Diego, State of California, more particularly described as:

LOT 1 OF NORMANDY BY THE SEA, IN THE CITY OF
DEL MAR, COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7091
FILED IN THE OFFICE OF THE COUNTY RECORDER OF
SAN DIEGO COUNTY OCTOBER 20, 1971.

- B. The HOA is a Common Interest Development as defined by the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350, et. seq.
- C. The HOA has the duty, responsibility and authority to perform certain functions set forth in the Governing Documents for the HOA, including the original Declaration of Restrictions for Normandy By The Sea recorded in the Official Records of San Diego County on March 2, 1972, as File/Page No. 50710.
- D. The Real Property consists of 38 Living Units. Each Owner of a Unit is to receive title to a Unit plus an undivided fractional interest as tenancy in common in the Common Area together with any Exclusive Use Common Area and Special Use Common Area conveyed appurtenant thereto. The Development shall be managed by the Normandy By The Sea Community Association, a California non-profit mutual benefit corporation, hereinafter sometimes referred to as the “Association.”

In accordance and compliance with the Governing Documents, the HOA establishes this First Restated Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) for the protection and benefit of the Development. These CC&Rs entirely replace and supplant the Original Declaration and any Amendments and/or Supplements recorded or unrecorded.

ARTICLE I DEFINITIONS

- Section 1.1* **Adjacent Owners.** Owners of Units separated by a wall.
- Section 1.2* **Alternative Dispute Resolution.** Mediation, arbitration, conciliation, or other non-judicial procedure that involves a neutral party in the decision-making process.
- Section 1.3* **Architectural Guidelines.** The policies and procedures established by the Board governing any proposed changes to the Development.
- Section 1.4* **Architectural Review Committee or ARC.** The committee established by the Board in accordance with these CC&Rs to review changes to the Development proposed by Owners and to recommend action to the Board.
- Section 1.5* **Articles.** The Articles of Incorporation of the Normandy By The Sea Community Association, a California non-profit, mutual benefit corporation.
- Section 1.6* **Assessment.** Any regular, special or reimbursement assessment as defined in these CC&Rs and the Davis-Stirling Common Interest Development Act.
- Section 1.7* **Association.** The Normandy By The Sea Community Association, a California non-profit mutual benefit corporation exercising the powers and duties of a California non-profit corporation pursuant to the Civil Code Section 1350, et. seq., a common interest development. Also referred to as the “HOA.”
- Section 1.8* **Beneficiary.** A mortgagee, or the beneficiary or holder of a note secured by a Deed of Trust, and/or the assignees of a mortgagee, beneficiary or holder.
- Section 1.9* **Board of Directors or the Board.** The governing body of the HOA, as set forth in the Governing Documents.
- Section 1.10* **Bylaws.** The Bylaws of the HOA.
- Section 1.11* **CC&Rs.** This First Restated Declaration of Covenants, Conditions and Restrictions. Also referred to as the “Declaration.”
- Section 1.12* **Common Area.** Those portions of the Development, to which title is held by all of the Owners in common, and excepting the individual condominium Units.
- Section 1.13* **Common Expenses.** Any cost for which use of HOA funds is authorized by the Governing Documents or applicable laws.
- Section 1.14* **Condominium.** Also referred to as a “Unit.” An estate according to Civil Code Section 1351(f), defined by the Condominium Plan.

Section 1.15 **Condominium Plan.** The document which describes and defines the entire Development, filed on October 26, 1971, as File/Page No. 246952 in the Official Records of the San Diego County Recorder's Office.

Section 1.16 **Declaration.** This First Restated Declaration of Covenants, Conditions and Restrictions. The Declaration may also be referred to as the "CC&Rs."

Section 1.17 **Development.** All of the real property and improvements commonly known as Normandy By The Sea, as depicted on the Condominium Plan, and more particularly described as:

LOT 1 OF NORMANDY BY THE SEA, IN THE CITY OF DEL MAR, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 7091 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY OCTOBER 20, 1971.

Section 1.18 **Director.** An Owner or Tenant elected to the Board of Directors by the Membership.

Section 1.19 **Eligible Insurer, Guarantor.** An insurer or guarantor who has requested notice of certain matters as set forth in these CC&Rs.

Section 1.20 **Eligible Mortgage Holder.** A holder of a first mortgage on a Unit who has requested notice of certain matters as set forth in these CC&Rs.

Section 1.21 **Exclusive Use Common Area.** Common Area designated by the Governing Documents for the exclusive use of one or more, but fewer than all of the Owners in accordance with California Civil Code Section 1351(I). Those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan including adjacent balconies, patio(s), and owned parking area(s).

Section 1.22 **Fiscal Year.** The accounting period selected by the Board covering twelve (12) consecutive months, at the end of which the HOA's books are closed.

Section 1.23 **Governing Documents.** As used in the Davis-Stirling Act, a collective term that refers to these CC&Rs, as well as all other documents enacted by the HOA or recorded or filed with any governmental agency with respect to the Development and the HOA.

Section 1.24 **Guest.** Anyone who is in the Development but who is not a Resident (including Owners who have rented or leased their Unit).

Section 1.25 **Improvement.** Any change to any part of the Development, and any part of the Development other than the real property.

- Section 1.26* **Living Unit.** Portions of the condominium property shown and described as such on the Condominium Plan. Also referred to as a Unit.
- Section 1.27* **Member.** Any Owner of a Unit in the Development. All Owners are Members of the HOA. "Member in good standing" shall mean a Member that is current in the payment of all assessments, does not owe any fines and has no open violations pursuant to Association records.
- Section 1.28* **Mortgage.** Any security interest encumbering all or any portion of a Unit.
- Section 1.29* **Mortgagee.** The beneficiary of a mortgage encumbering all or any portion of a Unit.
- Section 1.30* **Officer:** The President, Vice President, Secretary or Treasurer elected at the annual organizational meeting of the Board of Directors. Officers must be Directors. One person may hold two (2) or more offices except those of President and Secretary.
- Section 1.31* **Owner.** Any Owner of any Unit in the Development. All Owners are Members of the HOA.
- Section 1.32* **Party Wall.** Any wall that is shared by more than one Owner, or shared by an Owner and the Association.
- Section 1.33* **Professional Manager.** The property management company and/or its representative.
- Section 1.34* **Quorum.** A majority of the Board or the Members that constitute a quorum thereof, unless specifically stated otherwise in a particular provision of the CC&Rs or Bylaws.
- Section 1.35* **Regular Assessment.** The assessment levied by the HOA with respect to all Units, used for paying regular expenses and funding reserves.
- Section 1.36* **Reimbursement Assessment.** An assessment levied by the HOA with respect to one or more Owners for reimbursement of costs and expenses of any kind, including attorney fees, incurred by the HOA on behalf or as a result of the Owner(s) subject to the assessment.
- Section 1.37* **Residents.** The people living in the Development, regardless of whether they are Owners.
- Section 1.38* **Rules and Regulations or Rules.** Policies and procedures enacted and implemented by the Board pursuant to the Governing Documents.

Section 1.39 **Special Assessment.** An assessment levied with respect to all Units for payment of extraordinary expenses of the HOA.

Section 1.40 **Special Use Common Area.** The two lightwells in each building.

Section 1.41 **Tenant.** A Resident of the Development who is renting or leasing a Unit.

Section 1.42 **Unit.** An estate according to Civil Code Section 1351(f), defined by the Condominium Plan. Also used to refer to Living Unit.

ARTICLE II POWERS AND DUTIES OF THE HOA

Section 2.1 **Management and Control by the Board.** Except as otherwise specifically provided in these CC&Rs, the Board has the obligation and sole authority to manage, operate and control the Development, and to interpret these CC&Rs. The Board shall consist of five (5) persons that are Owners of a Unit or Tenant(s) living within the Development. Each Unit may have only one person on the Board at any one time. At least three members must be Owners of a Unit at all times.

Section 2.2 **Powers and Responsibilities of the HOA.**

- A. The HOA, acting through the Board and officers, has the right to adopt and amend rules relating to any use of the Development, subject to California Civil Code Section 1357.100, et. seq., and a reasonable fining policy for enforcement. A copy of the rules must be:
 - (1) Maintained in the office of the Association's Professional Manager and be available for inspection during regular business hours; and,
 - (2) Given to each Owner and given to each new Owner within a reasonable time after the HOA has notice of occupancy of a Unit. Amendments must be given to each Owner at least ten (10) days prior to the effective date.
- B. The HOA has the right to limit the number of Guests and charge fees for using the Common Areas.
- C. The HOA has the right to suspend the right to use the Common Area for any period during which any assessment against a Unit remains delinquent.
- D. The HOA must enforce the Governing Documents. Penalties may be imposed by the HOA for failure to comply with the Governing Documents, including levy of a Reimbursement Assessment, suspension

of use of the Common Area, suspension of voting privileges and reasonable fines.

- E. The HOA may grant permits, licenses, utility easements and other easements or permits necessary for maintenance or operation of the Development, under, through or over the Common Area.
- F. The HOA must pay all taxes and charges assessed against the Common Area.
- G. The HOA must provide for water, sewer, electrical service, refuse collection, landscaping and gardening service for the Common Area.
- H. The HOA may borrow money for improving or restoring the Common Area and for litigation related to the Development, but may not pledge assessments as security for any loan except with approval of a majority of a quorum of Owners.
- I. The HOA shall secure and maintain policies of insurance, including fire, earthquake, casualty, liability, workers' compensation and other insurance as provided by the Governing Documents and by law.
- J. The HOA may take any lawful action which is in furtherance of its obligation to preserve, protect, maintain and enhance the Development.
- K. The HOA may contract for and pay for reconstruction of the Common Area damaged or destroyed, which the Board determines in its sole discretion requires reconstruction.
- L. The HOA may enter into contracts for the benefit of the Development not exceeding one year in duration, except for the exception(s) set forth in the Bylaws.
- M. The HOA may delegate to others its powers.
- N. The HOA may prosecute or defend, under the name of the Association, any action affecting or relating to the Common Areas or the personal property or any action in which all of the Owners have an interest in the subject of the action or in whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist.
- O. The HOA shall cause to be conducted, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain.

Section 2.3 **Limitation of Liability and Indemnification.** No Member of the Board of Directors may be held individually or personally liable or obligated for performance or failure of performance of his or her duties or responsibilities, unless he or she fails to act in good faith, or is grossly negligent. Also, Directors, both present and former, shall be indemnified and defended by the Association in a manner consistent with Cal. Corps. Code §7237, as the same may be amended from time to time.

ARTICLE III MAINTENANCE RESPONSIBILITIES

Section 3.1 **Maintenance.** The HOA and Owner maintenance, repair and replacement obligations are set forth in detail in the Association/Owner Maintenance Repair Replacement Matrix attached hereto as Exhibit “A” and incorporated herein by this reference. Unless otherwise provided herein, Owners are responsible for maintaining their Units and the Exclusive Use Common Area associated therewith, and any related area or building components as specifically set forth in Exhibit “A” to these CC&Rs. To the extent that the maintenance or repair of any building component is not addressed in Exhibit “A” or these CC&Rs, it shall be handled per Cal. Civil Code §1364.

Section 3.2 **Quarterly Maintenance Inspections.** Owners are required to conduct quarterly maintenance inspections regarding each of the Owner-designated items indicated on the Association/Owner Maintenance Repair Replacement Matrix, attached hereto as Exhibit “A”. Notwithstanding any other provision of this Declaration, the Association shall not be responsible for maintenance, failure to maintain, or damages caused to Common Area or a Unit(s) by any of the Owner-designated items on the Maintenance Repair Replacement Matrix, regardless of whether the Owner has conducted the inspections required in this Section.

Section 3.3 **Association’s Right to Perform Owner Maintenance.** If an Owner fails to carry out the maintenance or repair responsibilities referenced in this Article, within a reasonable time period provided by the Board, the Board may in its discretion cause such work to be done and may assess the costs thereof to such Owner pursuant to Article VII of this Declaration. The Association shall provide at least fourteen (14) days written notice to the Owner before exercising this right of self-help. Such assessment shall be due and payable within thirty (30) days after the Board gives written notice thereof. Every Owner must perform promptly all maintenance and repair work within his or her own Unit which if omitted would affect the Development as a whole or in part, and shall be expressly responsible for damages and liabilities that his or her failure to maintain and repair may give rise to.

Section 3.4 **Alteration of Units.** All modifications or improvements to a Unit shall be done in compliance with the requirements of Article VIII. Any Owner who fails to

comply with Article VIII may be forced to modify or altogether remove any unapproved improvements. Subject to Article VIII and Section 4.8, each Owner shall have the right, at his or her sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, and perimeter walls of the Living Unit and the surfaces of the bearing walls and partitions located within the Living Unit. Each Owner shall also have the right to substitute new finished surfaces in place of those existing on the ceilings, floors, walls, and doors of the Living Unit subject to Article VIII and Section 4.8. However, an Owner or Tenant may not move, remove, or modify the fire alarm horn. Each Owner shall further have the right, at the Owner's sole expense, to facilitate access for handicapped persons in accordance with Civil Code Section 1360, or similar superseding statute. The HOA may require removal of the modifications when the person needing them no longer occupies the Unit.

Section 3.5 **Rights of Entry.** The Board of Directors shall have a limited right of entry in and upon the exterior of all Units for the purpose of inspecting the Project, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors. However, nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property to be maintained or repaired by the Unit Owner. Nothing in this Article shall in any manner limit the right of the Unit Owner to exclusive control over the interior of his Unit. The Board may also authorize access to Exclusive Use Common Areas for the purpose of repair and maintenance on other Units. Provided, however, that a Unit Owner shall be deemed to have granted a right of entry to the Board of Directors or any other person authorized by the Board of Directors in case of any emergency originating in or threatening his Unit, whether the Unit Owner is present or not. Provided, further, that a Unit Owner shall permit other Unit Owners, the Board of Directors, or their representatives, to enter his Residence, including his/her Exclusive Use Common Area and Special Use Common Area for the purpose of performing required installation, alterations, maintenance or repair to the Common areas and to the mechanical, plumbing or electrical services to a Residence, provided that such requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner whose Unit is to be entered. In case of an emergency, such right of entry shall be immediate.

Section 3.6 **Party Walls.** Owners are responsible for repair and replacement of Party Walls, including all items inside or attached to Party Walls, occasioned by their negligence, gross negligence or willful or wanton conduct.

ARTICLE IV USE REQUIREMENTS

Section 4.1 **Residential Use.** Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes, except as provided in this Section. No

portion of the Common Area shall be improved, used, or occupied for any commercial purpose. Notwithstanding the above, business activities may be carried on within the Units, so long as no external evidence of said business activity exists and there is no unreasonable impact on surrounding Units. The occupancy of each Unit by its Residents shall be in a manner consistent with all applicable City and County occupancy limitations for single family residential dwellings of the particular size and type at issue. The Board, in its sole discretion, shall have the exclusive power to determine whether any use of a Unit violates this Section 4.1.

Section 4.2

Pets and Animals. The HOA reserves the right to control or expel from the Development any pet which becomes a nuisance, as determined in the sole discretion of the Board. The following guidelines apply to all pets and are interpreted and conclusively determined in the sole discretion of the Board.

- A. Unless otherwise permitted by the Board in writing, no more than two (2) household pets are permitted to reside in any Unit. No animal may be permitted to create excessive or disruptive noise, or to pose a threat to other animals or to people.
- B. Only domesticated animals permitted by the Board may be kept as household pets, provided they are not kept, bred, or raised for commercial purposes or in unreasonable quantities. Livestock, naturally venomous or toxic animals, and animals that emit noxious odors are prohibited.
- C. Dogs and cats must have a current license attached to their collars at all times when in the Common Area.
- D. Dogs and cats must be on a leash at all times when being walked through the Common Area.
- E. Animals may not be tied to trees, stakes, or any exterior building structure, or left unattended at any time.
- F. Animals in the Development must be kept on a leash held by a person capable of controlling the animal at all times.
- G. No structure for housing any animal may be maintained so as to be visible from any part of the Common Area, except with the prior approval of the HOA.
- H. The Owner of a Unit is jointly and severally liable for the activity of any animal associated with or living in the Unit, regardless of ownership of the animal.
- I. No animal that, in the Board's opinion creates an unreasonable annoyance or nuisance to other Owners, may be kept at the Development. If at any

time the Board determines an animal is an unreasonable annoyance or nuisance, the Board shall have the power to have that animal permanently removed from the Development. After notice and a hearing, all Owners shall immediately comply with any removal order issued by the Association regarding an animal.

Section 4.3 **Use of Garages and Exterior Parking Spaces.** Designated garage spaces are subject to the following guidelines:

- A. Vehicles parked in or blocking any other Owner's space or parked in a non-designated space will be towed at the vehicle owner's expense. Vehicles improperly parked will be towed at the vehicle owner's expense, as permitted by California Vehicle Code Section 22658, and may also be fined by the Association.
- B. Vehicles that are leaking fluids, oil, water, etc. or are not operable must be repaired or removed from the Development.
- C. Storage of RV vehicles, boats, and trailers is not permitted.
- D. No Common Area parking space, nor any part of the garage or Common Area, may be used to conduct maintenance or to repair any automobile, except for emergency repairs necessary to remove the vehicle from the Development.
- E. Further rules and regulations regarding parking may be enacted and implemented by the Board of Directors pursuant to these Governing Documents, as the Board of Directors deems appropriate in their discretion.
- F. The maximum speed limit is ten (10) miles per hour.
- G. Owners and/or Residents may use garage spaces for storage pursuant to the guidelines outlined in this Declaration and the Association's Rules and Regulations.
- H. Parking is allowed for currently registered and operational vehicles only.

Section 4.4 **Commercial and Recreational Vehicles.** No trailer, motor home, recreational vehicle, camper, commercial vehicle, boat or similar equipment or other vehicle deemed inappropriate by the Board, in its sole discretion, is permitted in the Common Area. Commercial vehicles in the Development conducting business are permitted only for the limited duration necessary to conduct business with the HOA or a Resident.

Section 4.5 **Window Coverings.** Windows may not be covered with non-standard window coverings such as foil or cardboard. Alterations in color, material or design of

replacements for the existing windows or screens in any Unit require prior written approval of the Board of Directors.

Section 4.6 **Use of Exclusive Use Common Area.** Exclusive Use Common Area shall be (i) appurtenant to the Condominium, the Living Unit of which bears the same number as the Exclusive Use Area as set forth on the Condominium Plan, and (ii) used only for the purposes set forth in this Declaration. Exclusive Use Common Areas shall not be used for temporary or permanent storage purposes. The right to so use an Exclusive Common Use Area shall be exercisable only by the Owner(s) of the Unit appurtenant thereto and/or said Owner's Tenants and licensee(s). Conveyance of a Unit shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Unit. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant.

Section 4.7 **Dangerous Use of Units.** No part of the Development may be occupied or used in any manner which causes it to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, which causes any policy of insurance to be canceled or suspended, which causes the company issuing the policy to refuse renewal thereof, or which causes the cost of insurance to rise, without the prior written consent of the HOA.

Section 4.8 **Flooring Surfaces.** Any proposed modification to the flooring of a Unit, with the exception of carpeting, must be approved by the Board in writing prior to installation. Such modification must include a Board approved sound barrier in order to mitigate sound transmission. All such flooring modifications or changes must also comply with Article VIII of these CC&Rs, including the need to get written Association approval before starting work.

Section 4.9 **Use of Common Area.** No part of the Common Area may be obstructed so as to interfere with its intended, ordinary use. No part of the Common Area may be used for storage purposes, except for storage of maintenance equipment used exclusively to maintain the Common Area, or with prior written approval of the Board. Except as otherwise provided herein, no Owner shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishing or other object therefrom except with the prior written consent of the Board.

Section 4.10 **Outside Drying Facilities and Clotheslines.** Outside drying facilities visible from the Common Area are prohibited, including items draped or placed outside of any Unit. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes, linens, towels or other items on the Common Area or Exclusive Use Common Area nor shall such items be placed or draped outside the Living Unit.

Section 4.11 **Antennae.** Unless otherwise stated herein, there shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained on the Development for any purpose whatsoever. No outside television or radio antennae or other similar device is permitted in the Development, except for satellite dishes for which the Board shall enact and maintain a policy. No satellite dish or similar device may be attached to the Common Area or exterior of the building without prior written Board of Directors' approval.

Section 4.12 **Signs and Flags.** Pursuant to California Civil Code Section 1353.5 (or other applicable statutes or amendments), the Association shall not limit or prohibit the display of the United States flag by an Owner on or in the Owner's separate interest or within the Owner's Exclusive Use Common Area. However, the Board of Directors may limit, regulate, or curtail an Owner's placement of the United States flag; in the event such placement poses a public health or safety concern to the Normandy By The Sea development, or adjacent properties.

Except for signs installed by the HOA, no commercial sign, other than one sign of customary and reasonable dimensions advertising a Unit for sale or lease, may be displayed in the Unit or Development.

Noncommercial signs may be displayed in an Owner's separate interest, except as prohibited by law. 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 windows or doors 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.

The Board of Directors reserves its power to regulate the posting or displaying of noncommercial signs and posters that are more than nine (9) square feet in size and noncommercial flags or banners that are more than fifteen (15) square feet in size.

Section 4.13 **Vehicle Maintenance.** Automobiles may not be dismantled, repaired, maintained, or serviced in the Common Area, except for emergency repairs necessary to remove the equipment or vehicle from the Development. Also, vehicles shall not be washed in the Common Area or any other portion of the Development including the garage and parking spaces, at any time.

Section 4.14 **Diseases, Insects, and Rodents.** Residents may not permit any thing or condition to exist in the Development that may induce, breed or harbor infectious plants, diseases, insects or rodents.

Section 4.15 **Impairment of Development and Easements.** Residents may not do anything that will impair the structural soundness or integrity of any part of the Development, nor impair any easement, nor do any act or allow any condition to exist which impairs ordinary use of other Units and/or Residents.

- Section 4.16* **Nuisance.** All noxious, illegal, offensive activity or any activity that endangers the health of, or unreasonably annoys or disturbs other Residents, as determined in the sole discretion of the Board, is prohibited. The terms of this Section 4.16 will be interpreted in the sole discretion of the Board with respect to the HOA's actions, but the Board can not affect the rights of an Owner to proceed individually for relief from interference with his or her property or personal rights. The Board has the discretion to determine that the terms of this Section must nevertheless be resolved by the Owner or Owners involved, and not by the Association. Any action deemed a violation of this Declaration or any other governing document shall constitute a nuisance.
- Section 4.17* **Unightly or Unkempt Conditions.** Activities that cause disorderly, unsightly, or unkempt conditions, determined in the sole discretion of the Board to have a negative effect upon the Development, are prohibited.
- Section 4.18* **Responsibility for Damage to the Common Area.** Any person who damages the Common Area will be liable to the HOA for the damage, and the Owner and Resident of the Unit with which the person causing the damage is associated are jointly and severally liable to the HOA for the damage and the cost to repair or replace the damaged Common Area.
- Section 4.19* **Common Area Walkways.** No potted plant may be kept on a walkway that unreasonably interferes with the use of the walkway, or causes damage to the walkway. No patio furniture or any other furniture may be stored or kept on the walkway. Nothing may be stored or placed on the Common Area walkways that unreasonably interferes with ingress and egress, or poses a safety risk. The Board may adopt additional rules and regulations regarding the use of walkways, which are not inconsistent with these CC&Rs.
- Section 4.20* **No Timeshares.** Timeshare developments, timeshare estates, timeshare programs and timeshare uses, as defined by California Business & Professions Code Section 11003.5, of Units are prohibited, and timeshares and timeshare programs or use similar to a timeshare arrangement of a Unit are prohibited.
- Section 4.21* **Waste Disposal.** All Owners shall use the Association-provided trash containers, dumpsters, and recycle bins to dispose of waste material. Owners and/or Residents are absolutely prohibited from disposing of hazardous waste in trash containers, dumpsters, recycling bins or anywhere else within the development. Hazardous waste as provided by California statutes, such as oil, paint, batteries, fluorescent light bulbs, etc., shall be disposed of by the Owner or Tenant as proscribed by law and not placed in the dumpster or left adjacent thereto. Owners or Tenants shall be responsible for removing construction waste from the Development.
- Section 4.22* **Patios and Balconies.** No patio shall be enclosed in any manner so as to create an additional living space for a Unit. No patio roof or screen shall be constructed by

any Unit Owner, unless in accordance with standard plans approved by the Board of Directors. No item may be attached to the metal railings.

Section 4.23 **Noise Restrictions/Quiet Hours.** The Association shall observe noise restriction hours, and during said hours Residents shall not unreasonably annoy or disturb other Residents via loud or offensive activities. Noise restrictions shall be in effect during the following hours: Monday through Sunday – 11:00 P.M. to 7:00 A.M.

Section 4.24 **Absentee Owners.** Owners who are not full-time, year-round Residents must regularly monitor and maintain their Units while not residing in the Development. Owners may arrange for a private property manager/management company or other individual(s) to conduct regular monitoring and maintenance as long as the Owner's obligations are satisfied. Any Owner who fails to fulfill the requirements set forth in this Section shall be responsible for increased damage, and the corresponding cost of repair, associated with a failure to monitor. The Board, in its sole discretion, shall have the power to determine whether an Owner violated this Section and should be responsible for a greater portion of the cost of repair.

Section 4.25 **Special Use Common Areas.** Lightwells must be used in a manner consistent with the impact of noise on other Residents and must not contain plant matter or other material that may compromise drains.

Section 4.26 **Storage Spaces.** Units shall have an assigned storage space located in the Common Area of the Development. Each assigned space shall be for the exclusive use of the Unit that it is assigned to and shall be treated as the Owner's exclusive use common area. The storage spaces shall be maintained by the Owner at his or her sole cost. Also, the Association shall have a right, after reasonable notice to the Owner, to access or enter any storage space for the purposes of carrying out any of its responsibilities under the Restated Declaration. No storage space shall be used to store any unreasonably dangerous or hazardous item as set forth in greater detail in the Association's Rules and Regulations.

ARTICLE V

COMMON AREA USES AND IMPROVEMENTS

Section 5.1 **Ownership of Common Area.** The Common Areas are and shall be owned by the Owners as tenants-in-common, in equal, undivided shares. Unless otherwise expressly stated therein, any transfer or conveyance (by operation of law or otherwise) of a Unit shall be presumed to transfer or convey the entire Condominium, including but not limited to the interest of the Owner of such Unit in and to the Common Area.

- Section 5.2* **Transfers.** The beneficial interest in personal property acquired by the Board shall be owned by the Owners in the same proportion as their respective interests in the Common Area. A transfer or conveyance (by operation of law or otherwise) of a Condominium shall transfer to the transferee ownership of transferor's beneficial interest in such personal property.
- Section 5.3* **Severing Interest.** No Owner shall voluntarily or involuntarily sever, one from the others, any of the component interests which comprise their Condominium. The restriction set forth in this Section shall not extend beyond the period in which the right to partition is suspended.
- Section 5.4* **Easement for Maintenance.** Owners grant to the HOA an easement over, under, upon and across the Common Area for the purpose of maintaining and altering the Development consistent with the Governing Documents for the Association.
- Section 5.5* **Limitation on Alterations.** No person or entity other than the HOA may alter the Common Area and/or Development, except as otherwise provided in the Governing Documents, or with the prior written consent of the Association.
- Section 5.6* **Owners Easement of Enjoyment.** Every Owner is hereby granted an easement for access to and from, and for enjoyment of the Common Area, except as to Exclusive Use Areas, subject to the rights and duties of the HOA, described in these CC&Rs.
- Section 5.7* **The Board's Responsibility for the Common Area.** The Board is responsible for the repair, maintenance and beautification of the Common Area portions of the Development. The Board shall also maintain, repair and replace those portions of the Development assigned to it in Exhibit "A" to these CC&Rs.
- Section 5.8* **Damage by Wood-Destroying Pests.** Consistent with California Civil Code Section 1364 (or equivalent sections), the HOA is responsible for the inspection and treatment of wood-destroying pests in the Common Area. The HOA may cause the temporary, summary removal of any Resident for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The cost of temporary Resident relocation must be borne by the Resident of the Unit affected.
- Section 5.9* **Activity in Common Area.** No activity shall be carried on in the Common Areas which shall be contrary to the rules and regulations of the Board relating to use of and activity in the Common Areas.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 6.1 **Membership.** Every Owner of a Unit is a Member of the HOA, with all rights and obligations associated with Membership. Membership is appurtenant to, and may not be separated from, ownership of a Unit. Only Members in “good standing” shall be permitted to exercise the Membership rights contained in the Governing Documents for the Association. A “Member in good standing” is defined by Section 1.27.

Section 6.2 **Voting Rights.** All Members have the right to vote, unless the right to vote is suspended by the Board of Directors.

A. Members are entitled to one (1) vote for each Unit owned. Cumulative voting is permitted for all elections in which two or more directors are to be elected. When two (2) or more people hold an interest in a Unit, the vote for the Unit must be exercised as they between or among themselves determine, but only one full vote may be cast per Unit.

B. The HOA may refuse to accept a vote from any Member if the HOA has written notice of a voting dispute between or among co-Owners, in which case the Unit may be counted only to establish a quorum.

Section 6.3 **Written Notice.** As required by California Corporations Code Section 7511, written notice by the Board of each annual and special meeting shall be served on the Owner of each Condominium not less than ten (10) days nor more than ninety (90) days prior to such meeting. Said notice shall specify a reasonable time, date, and place in Del Mar, California of such meeting and in the case of a special meeting, the general nature of the business to be transacted.

Section 6.4 **Quorum.** The presence in person or by proxy of a majority of the total voting power entitled to vote at any meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy, may adjourn the meeting to a time not less than two (2) days nor more than thirty (30) days from the time of the original meeting date, at which meeting the quorum requirement shall be twenty-five percent (25%) of the total voting power of the membership of the Association.

ARTICLE VII ASSESSMENTS

Section 7.1 **Purpose of Assessments.** Assessments must be used to preserve, protect, maintain and enhance the Development, to reimburse the HOA for costs incurred on behalf of any Owner(s) and for any other purposes determined to be appropriate by the Board and permitted by law.

Section 7.2 **Types of Assessments.** The HOA may impose any or all of the following assessments:

- A. Regular Assessments: Assessments used to pay the HOA's operating expenses and to fund reserves.
- B. Special Assessments: Assessments for extraordinary expenses, including but not limited to, litigation related to the Development, maintenance, reserve funding, and operations.
- C. Reimbursement Assessments: Assessments to recoup funds expended by the HOA, including but not limited to, for attorney fees attributable to an Owner or Owners.

Section 7.3 **Creation of Obligation for Assessments.** Each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association:

- A. Regular assessments; and,
- B. Special assessments, such assessments to be established and collected as hereinafter provided.

The regular and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be charged on the Unit and shall be a continuing lien on the Unit against which each such assessment is made. Said lien shall become effective upon recordation of a notice of assessment, thirty (30) days after the mailing to the delinquent Owner of a written notice of default and demand to cure such default. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner of a Unit may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his or her Unit.

Section 7.4 **Assessment Lien and Personal Liability.** All assessments together with late charges, interest, costs, and all attorneys' fees are a charge and a continuing lien upon the Unit against which each assessment is made, to the extent permitted by California Civil Code Sections 1366, 1367 and 1367.1. Assessments are also the personal obligation of any person who held an ownership interest in the Unit at the time when the assessment fell due. Each Owner of a Unit is jointly and severally liable for the entire assessment amount.

Section 7.5 **No Avoidance of Assessment Obligations.** No Owner is exempt from personal liability for assessments by waiver of the use and enjoyment of the Common Area, by abandonment or non-use of the Unit or any other portion of the Development or in any other manner, except as specifically provided by law.

Section 7.6 **No Withholding of Assessments.** Payment of assessments may not be withheld because of non-use of the Common Area, for the Association's failure to perform services, or for any other reason, except as specifically provided by law.

Section 7.7 **Regular Assessments.**

- A. Not fewer than thirty (30) nor more than ninety (90) days prior to the beginning of the HOA's Fiscal Year, the Board shall estimate the total amount required to fund the anticipated Common Expenses for the next succeeding fiscal year, and shall prepare and distribute to all Members a budget. If the Board fails to distribute a budget accordingly, Regular Assessments may not be increased for that fiscal year, except with vote or written assent of a majority of Owners. Until such time as the Association shall change the same, regular assessments shall be due and payable monthly on the first day of each calendar month.
- B. The HOA's total annual estimated expenses (less projected income from sources other than assessments) will be the aggregate Regular Assessment for each fiscal year, provided that the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the HOA's immediately preceding fiscal year without the vote or written assent of a majority of a quorum of Owners pursuant to California Civil Code Section 1366.
- C. Prior to raising the Regular Assessments, except when an increase is set forth in an annual budget provided to all Owners, the HOA shall provide thirty (30) days written notice of the proposed increase to all Members.
- D. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous fiscal year's Regular Assessment, or a special assessment which exceeds five (5) percent of the budgeted gross expenses of the Association for that fiscal year does not apply to assessment increases necessary to address emergency situations. An emergency situation is any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense where a threat to personal safety is discovered; or
- (3) An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Board in preparing the annual budget, provided that prior to the imposition or collection of an assessment under this paragraph, the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense could not have been reasonably foreseen. The Board's resolution must be distributed to the Members together with the notice of assessment.

E. If the HOA fails to make an estimate of the Common Expenses for any fiscal year then the Regular Assessment made for the preceding fiscal year will be assessed against each Owner for the then current fiscal year. Nothing in this Section "E" may be interpreted to limit the HOA's authority to impose any assessment or increase.

Section 7.8 **Special Assessments.** Unless otherwise provided by law, Special Assessments may not exceed, in the aggregate during any fiscal year, an amount equal to five percent (5%) of the budgeted gross expenses of the HOA for that fiscal year, without the vote or written assent of a majority of a quorum of all Owners pursuant to California Civil Code Section 1366.

Section 7.9 **Reimbursement Assessments.** Reimbursement Assessments are due and payable after notice pursuant to these CC&Rs is given to the Owner subject to the assessment. The Association may levy a reimbursement assessment against any Owner who causes damage to Common Area, property owned by the Association located at the Development, or for bringing an Owner or his or her Unit into compliance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or any other charge designated an assessment in the Association governing documents together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. Any such reimbursement assessment levied by the Association is made pursuant to and consistent with California Civil Code Section 1367.1(d), and its successor statutes or law. Reimbursement assessments may be enforced and collected via a lien to the same extent and with the same force as a regular assessment and special assessment referenced above provided that the monetary charge is intended to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Areas and facilities for which the Owner is responsible.

Section 7.10 **Exemption from Assessments.** The following real property subject to these CC&Rs, unless devoted to use as a residential dwelling, is exempted from Assessments:

- A. Part of the Development dedicated to and accepted by a governmental agency;
- B. The Common Area; and
- C. Any real property owned or leased by the HOA.

Section 7.11 **Effect of Non-Payment of Assessments.** As more particularly provided in California Civil Code Sections 1366, 1367 and 1367.1, at any time after any assessments, including Reimbursement Assessments, have become delinquent the HOA may file for recording in the Office of the San Diego County Recorder a notice of delinquency/assessment lien (“lien”) as to the Unit. The lien must state all amounts which have become delinquent, interest which has accrued, costs (including attorney fees) and the amount of any assessments relating to the Unit which are due and payable, although not delinquent. The lien must also include a description of the Unit and the name of the record or reputed record Owner. The lien must be signed by an officer of the HOA, or by the Association's attorney.

Immediately upon recording a lien, the amount set forth in the notice will become a lien upon the Unit described therein. The lien will then secure all other payments, assessments, costs (including attorney fees), penalties and interest which become due and payable with respect to the Unit following recording, until all amounts secured thereby are fully paid or otherwise satisfied.

If the delinquent assessments and all other assessments which have become due and payable with respect to the Unit, together with all costs (including attorney fees) and interest which have accrued on the amounts are fully paid or otherwise satisfied prior to the completion of a sale held to foreclose the HOA’s lien, the HOA shall record a subsequent notice stating the satisfaction and releasing the lien.

Section 7.12 **Foreclosure of Assessment Lien.** Each assessment lien may be foreclosed upon in the same manner as the foreclosure of a mortgage upon real property, or may be enforced by sale, and to that end a power of sale is hereby conferred upon the HOA.

Section 7.13 **Acceptance of Payments by the HOA.** Payments to the HOA must be applied to the Owner’s account in the following priority:

- A. Reimbursement Assessments;
- B. Interest and late charges;
- C. Fees and costs;
- D. Special Assessments; and,

E. Regular Assessments.

Section 7.14 **Uniform Rate Assessments.** Regular and Special Assessments shall be fixed at a uniform amount for each Unit.

Section 7.15 **Non-Payment of Assessments.**

- A. All assessments are due on the first of each month. Any assessment not paid by the 15th of that month is delinquent.
- B. Any assessment not paid within fifteen (15) days of the date due is subject to a late fee of ten percent (10%) of the outstanding assessment.
- C. Any assessment not paid within thirty (30) days after the date due will bear interest from the date due at the rate of twelve percent (12%) per annum, as provided by law.

Section 7.16 **Estoppel Certificate.** Upon request of any person, the HOA shall furnish a certificate setting forth all accounts payable and receivable for any Unit, executed and acknowledged by two (2) members of the Board. A properly executed certificate is binding upon the HOA as of the date of its issuance for any period of time set forth therein, or if not stated, for one (1) day. Such a certificate shall be furnished to any Owner within ten (10) days of a written request thereof and payment of a reasonable fee set by the Board.

Section 7.17 **Assignment of Rents.** Each Owner assigns to the HOA, absolutely and regardless of possession of the property, all money now due or to become due under any agreement for the use or occupation of any part of any Unit, now existing or hereafter made, for the purpose of collecting all Assessments and costs and expenses due the HOA which are in default. The HOA confers on each Owner the authority to collect and retain money due under any agreement for the use or occupation of any part of any Unit, provided that the HOA may revoke the authority at any time by written notice of a default in the payment of any Assessments. Upon revocation the HOA may collect and retain the money until the delinquent Assessments and related charges are satisfied, whether the money is past due and unpaid or current. The HOA's rights under this provision are subordinate to the rights of any First Mortgagee.

Section 7.18 **Membership Suspension.** The membership rights and privileges, together with the voting rights of any Member of the Association, may be suspended by the Board for any period of time during which the assessments on his or her Unit remain unpaid, and for a period not to exceed thirty (30) days from any infraction of the Association's published Rules and Regulations after reasonable written notice and an opportunity for a hearing before the Board.

Following the determination that Member should be suspended, procedures in accordance with California Civil Code Section 1363(h) shall be implemented.

The Board shall give the Member believed to be in violation at least ten (10) days prior written notice of the intended suspension and a hearing regarding the proposed suspension. The Member shall be given the opportunity to respond either orally or in writing before the hearing, or the Owner may attend the hearing in person. The written notice required may be given by any method reasonably calculated to provide actual notice. The Owner must be notified of the hearing outcome within at least fifteen (15) days from the date of the hearing.

Section 7.19 **Reserve Funding.** The Board of Directors shall maintain the reserve funds in accordance with California Civil Code Section 1365, et seq. However, the reserve fund will not necessarily be maintained at a particular level or percentage from year to year, except as required by California Civil Code Section 1365, et seq.

ARTICLE VIII ARCHITECTURAL CONTROL

Section 8.1 **Architectural Approval.** Any architectural change or Improvement to the Development visible from any Unit, the Common Area or public area surrounding the Development, or resulting in a structural change to a Unit/building, must be approved in advance and in writing by the Association. Also, any Owner modification to the plumbing system or electrical system for the building must be approved in writing by the Association if the modification will have any impact on the normal operation of these systems. The Association has the authority to grant conditional approval, which approval may be automatically withdrawn if conditions imposed are not met, or cease to exist.

Section 8.2 **Architectural Review Committee.** The Board may appoint a three (3) Member Architectural Review Committee (ARC), which may or may not have one or more Director members. The ARC shall only function as an advisory committee to the Board; all approvals must be granted by the Board of Directors. Members of the ARC may not receive any compensation for services rendered. If no ARC is created by the Board, the Board shall perform all architectural control functions required of the Association under this Article VIII.

Section 8.3 **Duties of the Committee and Board.** The ARC shall consider and make recommendations regarding all proposals submitted in accordance with the Governing Documents. The Board shall consider and act upon all proposals submitted in accordance with the Governing Documents, and shall take the ARC's recommendation into consideration when reviewing an Owner's proposal.

Section 8.4 **Meetings and Actions.** The ARC and Board shall meet from time to time as necessary to perform their duties regarding architectural submissions. The vote or

written consent of a majority of the Board members constitutes its decision regarding a specific proposal unless the unanimous decision is required by the Governing Documents. The ARC and Board may maintain a written record of all actions taken.

Section 8.5 **Architectural Guidelines.** The Board may, with assistance from the ARC, adopt, amend and/or repeal Architectural Guidelines. The Architectural Guidelines will interpret and implement the Governing Documents by setting forth the standards and procedures for Board review, and the guidelines for design and placement of alterations.

Section 8.6 **Approval by the Board.** Approval of the Board must be granted by majority decision of the Directors; no approval is final without Board consent and a writing evidencing the approval. A decision on a proposal or change to a proposal will be made in good faith, and will not be unreasonable, arbitrary, or capricious.

Section 8.7 **Approval of Improvements.**

- A. All improvements that may affect the structural integrity of a Unit or building must have plans submitted to the ARC and Board that shall be prepared by a licensed architect and/or engineer. Said professional shall be employed by the Unit Owner making the application, at his or her sole expense.
- B. The Board should act on plans submitted to it within sixty (60) days of receipt. If the Board fails to act on plans within sixty (60) days, upon demand, the applicant is entitled to hearing at the next regularly scheduled Board meeting to discuss the plans.
- C. Once plans have been approved by the Board, no material modifications may be made to the approved plans and no subsequent alteration, relocation, or addition may be made without a separate written approval by the Board. Also, once plans have been approved, the Owner shall secure all necessary and/or required permits and approvals for the project.

Section 8.8 **Appeal.** Any decision of the ARC may be appealed by submission of a written request for review to the Board, within thirty (30) days of receipt of the decision of the ARC. The Board must make a final decision by the date of the second regularly scheduled Board meeting following receipt of the appeal. If the ARC is the Board, there shall be no right of appeal.

Section 8.9 **Variances.** The Board may allow reasonable variances with respect to this Article or any restrictions specified in the Governing Documents in order to overcome practical difficulties, and to avoid unnecessary hardships, provided that the following conditions are met:

- A. If a variance will necessitate deviation from or modification of a use restriction that would otherwise apply under these CC&Rs, the Board must conduct a hearing on the proposed variance after giving at least thirty (30) days' prior written notice to all Owners. The Owners receiving notice of the proposed variance will have thirty (30) days to submit to the Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.
- B. In order to grant a variance, the Board must make a good faith determination that:
 - (1) The variance will not constitute a material deviation from the overall plan and scheme of development within the Development or from any restriction contained in the Governing Documents, and that the proposal allows the objective of the violated requirements to be substantially achieved despite noncompliance; and
 - (2) The variance relates to a requirement or restriction that is unnecessary or burdensome under the circumstances; and
 - (3) The variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Unit, the Common Area, Residents, Guests, or any part of the Development.

Section 8.10 **No Waiver Based Upon Prior Approval.** Approval by the Board of any other matter requiring Board approval may not be deemed to constitute a waiver of the right to withhold approval of the same or a similar matter subsequently submitted for approval.

Section 8.11 **No Liability of ARC or Board.** The ARC, its members, the Board and Directors who acted in good faith, and were not grossly negligent, may not be liable to the Association, any Owner or to any other party for any damage suffered or claimed on account of:

- A. The approval or disapproval of any plans, drawings, or specifications; or,
- B. The construction or performance of any Improvement, whether or not pursuant to approved plans, drawings and specifications.

ARTICLE IX

RENTING OR LEASING

Section 9.1 **Renting or Leasing.** Renting or Leasing consists of occupancy of a Unit by any person who pays the Owner of the Unit consideration for living in the Unit. As

used in these CC&Rs, any reference to any form of the word “lease” means the corresponding form of the word “rent,” and vice versa. The Association shall have the right to charge any Owner renting or leasing his or her Unit a reasonable move-in and/or move-out fee.

Section 9.2 **Terms.** Leasing a Unit must be pursuant to a written document, which is subject to the Governing Documents and the following provisions:

- A. The HOA may request reasonable information from Owners about Tenants, including the names of the Tenants, the terms and conditions of the lease, and/or a copy of the executed lease.
- B. Leases must contain the following language, and if it is not expressly contained in the lease then the language is deemed to be incorporated into the lease by existence of these CC&Rs. All Owners, and Tenants by occupancy of a Unit, agree to the incorporation of the following terms into the lease, and application of the following to the landlord-tenant relationship:
 - (1) Units may not be rented for transient purposes. All rentals must be by written lease for a term of no fewer than six (6) months, excluding month-to-month tenancies created by law after an initial six (6) month term. However, a rental to one lessee per year may be made for the duration of the Del Mar racing season.
 - (2) Upon written request from the HOA, Tenants must pay to the Association that portion of the rent necessary to satisfy any obligation of the Owner of the Unit to the HOA for payment of delinquent assessments. All payments thus made will reduce the Tenant's obligation to Owner of the Unit by like amount. Payment of assessments is deemed necessary for the habitability of the Units.
 - (3) No more than four (4) Renters may inhabit any one individually rented Unit; nor shall any Owner rent a Unit to more than four (4) Renters at any given time.
 - (4) Owners must provide Tenants copies of the Association's latest Rules and Regulations and, if requested, copies of these CC&Rs and the Bylaws. Tenants shall comply with all provisions of the Governing Documents, and violation thereof will constitute a default under any lease. If a Tenant or Resident violates the Governing Documents resulting in a fine or Reimbursement Assessment, all Owners, Residents and Tenants associated with the Unit will be jointly and severally liable to pay the assessment.

- Section 9.3* **Delegation of Right to Evict Tenant.** Owners hereby delegate and assign to the HOA the power and authority of enforcement against Tenants for breach of a lease resulting from violation of the Governing Documents, including the power and authority to evict the Tenant on behalf of and for the benefit of the Owner. The HOA must give the Owner and the Tenant thirty (30) days written notice prior to initiating eviction proceedings. If the Association proceeds to evict a Tenant, all costs, including attorneys' fees and court costs associated with the eviction shall become a Reimbursement Assessment payable by the Owner of the Unit.
- Section 9.4* **Use of Common Area.** Owners transfer and assign to Tenant(s), for the duration of lawful tenancy, all rights and privileges that the Owner has to use the Common Area. Any Owner renting or leasing his or her Unit is prohibited from reserving or using the Common Area facilities during the term of that tenancy. This includes all lockers and cabinets located in Common Areas.
- Section 9.5* **Existing Leases.** Leases existing on the effective date of these CC&Rs are permitted to continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms, rental amount or duration of occupancy, will be deemed a termination of the existing lease for purposes of application of these CC&Rs.
- Section 9.6* **New Leases.** The Owner shall provide the Professional Manager a copy of each new lease or rental agreement within fifteen (15) days of the effective date of the lease or agreement. Failure to do so may result in a fine, the details of which may be modified by subsequent Rules and Regulations.
- Section 9.7* **Non-Application of Article.** This Article does not apply to any leasing transaction entered into by the holder of any first mortgage on a Unit that becomes the Owner of the Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by the mortgage.

ARTICLE X

DISPUTE RESOLUTION PROCEDURE (MEET AND CONFER/INTERNAL DISPUTE RESOLUTION)

- Section 10.1* **Application.** This Article X applies to a dispute between the Association and an Owner involving their rights, duties or liabilities under California Civil Code Section 1363.810, under the Nonprofit Mutual Benefit Corporation Law, or under the governing documents of the Association. This procedure referenced in this Article X shall be initiated prior to initiating the dispute resolution procedure referenced in Article XI below, if applicable. This Article X applies to the applicable disputes referenced in Section 11.2.

Section 10.2 **Procedure.** Either party to a dispute within the scope of Civil Code Section 1363.810, et seq., may invoke the following procedure:

- A. The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing;
- B. An Owner may refuse a request to meet and confer; however, the Association may not refuse a request to meet and confer;
- C. The Board shall designate a member of the Board to meet and confer;
- D. The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute; and
- E. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association

Section 10.3 **Enforceable Agreement.** An agreement reached under Section 10.2(E) above binds the parties and is judicially enforceable if both of the following conditions are satisfied: (1) The agreement is not in conflict with law or the governing documents of the Association; and (2) the agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board.

Section 10.4 **Fees.** Unless otherwise stated by California law, an Owner may not be charged a fee to participate in the process described in this Article X; however, an Owner may not use this Section to force the Association to pay his or her attorneys' fees or costs in representing the Owner in the process described in this Article X and/or Article XI referenced below.

ARTICLE XI

ALTERNATIVE DISPUTE RESOLUTION (MEDIATION/ARBITRATION)

Section 11.1 **Subsequent Pre-litigation Procedure.** After the Dispute Resolution procedure set forth in Article X is completed and complied with, the Alternative Dispute Resolution procedure set forth in this Article XI shall be initiated before litigation is commenced, provided this Article is applicable.

Section 11.2 **Applicable Disputes.** The Association or an Owner may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to alternative dispute resolution, consistent with California Civil Code Sections 1369.510, et seq., and other successor California statutes and law. This

Article applies to enforcement actions in the Superior Court solely for (1) declaratory relief; (2) injunctive relief; (3) writ relief; and (4) relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000.00). This Article does not apply to Small Claims actions and assessment disputes.

Section 11.3 **Request for Resolution.** Any party to a dispute may initiate Alternative Dispute Resolution under this Article by serving on another party to the dispute a Request for Resolution. Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the Request. The Request for Resolution must include:

- A. A brief description of the dispute between the parties;
- B. A request for alternative dispute resolution; and,
- C. A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt of the request, or it will be deemed rejected.

Section 11.4 **Response to Request For Resolution.** The party receiving a Request for Resolution has thirty (30) days following receipt to accept or reject alternative dispute resolution. If not accepted within thirty (30) days the Request may be deemed rejected. If alternative dispute resolution is accepted, it must be completed within ninety (90) days of the date of receipt of the acceptance by the party initiating the Request, unless extended by written stipulation signed by both parties.

Section 11.5 **Certificate of Completion.** At the time of filing a civil action, the party filing the action shall file with the complaint a certificate stating that alternative dispute resolution has been completed in compliance with California Civil Code Section 1369.560 and these CC&Rs. Failure to file a certificate may be grounds for a demurrer or motion to strike unless the Court finds that dismissal of the action for failure to comply with this Article would result in substantial prejudice to one of the parties pursuant to Section 430.10 of the California Code of Civil Procedure.

Section 11.6 **Cost of Alternative Dispute Resolution.** The cost of the alternative dispute resolution hearing must be borne equally by the parties. Refusal to share costs equally constitutes rejection of alternative dispute resolution, regardless of prior acceptance.

Section 11.7 **Failure to Comply.** Failure of a Member to comply with the pre-filing requirements of these CC&Rs and California Civil Code Section 1369.510, et seq. may result in the loss of a party's right to pursue another Member or the HOA regarding enforcement of the Governing Documents.

ARTICLE XII

RIGHTS OF LENDERS

- Section 12.1* **Liability for Unpaid Assessments.** Any First Lender/Trust Deed Holder who obtains title to a Unit pursuant to the remedies provided in a Mortgage or a foreclosure is not liable for unpaid assessments or charges against the Unit which accrued prior to the acquisition of title.
- Section 12.2* **Subordination of Lien.** Every lien created pursuant to the Governing Documents is subordinate and subject to the lien of any real property mortgage or deed of trust encumbering any interest in a Unit given in good faith for value. If a lender acquires title to any interest in a Unit by judicial foreclosure, and thereafter conveys the interest in the Unit, any real property mortgage or deed of trust received by that lender as security for all or a portion of the purchase price of the interest in the Unit will be incontrovertibly deemed “given for value.”
- Section 12.3* **Superiority of Liens.** Notwithstanding any other provision in these CC&Rs, any lien created by or pursuant to the Governing Documents, including liens securing payments of assessments, accruing prior to sale of a Unit by a real property lender and prorated over the period of the lender's holding of title to the interest in a Unit is a lien superior to the lien of a real property mortgage or deed of trust received to secure a portion of the purchase price. All covenants, conditions, and restrictions set forth in this Declaration are binding upon and effective against any Owner whose title is derived through foreclosure at a trustee sale.
- Section 12.4* **Mortgage Protection.** The liens authorized hereunder or by law are subject and subordinate to the rights of the obligee of any indebtedness secured by any recorded first mortgage upon a Unit made in good faith and for value, provided that after foreclosure of any mortgage, the Board has the authority to create a lien on the interest of the purchaser at the foreclosure sale to secure all assessments levied hereunder for or payable during any period after the date of the foreclosure sale, which lien will have the same effect and be enforced in the same manner as provided herein in the case of other liens for unpaid assessments.
- Section 12.5* **Additional Lien Rights.** No amendment to any part of this Declaration will affect the rights of the mortgagee of any mortgage, recorded prior to the recordation of the amendment, who does not join in the execution thereof. The holder of the trust deed is entitled to written notification from the HOA, thirty (30) days prior to the effective date of any change in the Governing Documents, upon request. The holder of the trust deed is entitled to written notification from the HOA of any default by the trustor of any Unit in the performance of the trustor's obligation under the Governing Documents, which is not cured within thirty (30) days, upon request.

Any beneficiary under a deed of trust which comes into possession of a Unit pursuant to the remedies provided by law, the conditions of the trust deed, or by a deed-in-lieu of foreclosure is exempt from any right of first refusal or other restriction on the sale or rental of the Unit involved, including, but not limited to, restrictions on the age of Unit occupants.

Any holder of the trust deed which comes into possession of a Unit pursuant to the remedies provided by law, the deed of trust, or deed-in-lieu of foreclosure, shall take the property, free of any claims for unpaid assessments or charges against the Unit which accrue prior to the time the holder comes into possession of the Unit (except for claims for a pro rata share of such assessments or charges to all Units including the subject Unit).

Unless all holders of first trust deed liens on individual Units have given their prior written approval, the Association must employ a professional manager, may not change the pro rata interest or obligation of any Unit for purposes of levying assessments, may not, or by act or omission to act, seek to abandon the planned residential development status of the Development, except in the case of substantial loss to the Common Area.

No breach of these CC&Rs nor the enforcement of any lien provisions herein will defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

ARTICLE XIII INSURANCE

Section 13.1 **Duty to Obtain Insurance:** The Board shall obtain and continue in effect adequate blanket public liability and casualty insurance, workers' compensation, earthquake, and fire insurance with extended coverage for the full insurable replacement value of the project. Such insurance shall be maintained by the Board for the benefit of the Association, the Unit Owners, and the encumbrances upon the Project or any part thereof as their interests may appear as named insured, subject however, to the loss payment requirements as set forth herein. The Board may purchase such other insurance as it may deem necessary.

Section 13.2 **Fire and Casualty Insurance.** The Association shall obtain and maintain a "Bare Walls" policy or industry equivalent policy or policies of fire and casualty insurance with coverage for the full insurable replacement value of the improvements in the Common Area, excluding the Units. The "Bare Walls" policy will not cover the Unit interior, including but not limited to flooring, wall coverings, cabinets, personal property, interior finishes, appliances, fixtures, Owner improvements, or other such items located therein. The Board may, at its

sole option, obtain an extended coverage endorsement if it desires to extend the scope of the coverage to include some portions of the Unit. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in the Declaration. If required by any First Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

Section 13.3 **General Liability Insurance.** The Association shall obtain and maintain a policy or policies insuring the Association, its Officers, Directors, agents and employees, the Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any Units owned by the Association. Limits of liability under the insurance shall not be less than two million dollars (\$2,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence.

Section 13.4 **Directors and Officers Liability Insurance.** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

Section 13.5 **Fidelity Coverage.** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The bond or policy must contain a provision that the bond or policy may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 13.6 **Qualifications of Insurance Carriers.** The Association shall use generally acceptable insurance carriers with a minimum of a Best rating of B from which to purchase and maintain the coverage required herein.

Section 13.7 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the

Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board shall immediately notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith and in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may base its decision upon, among other things, a vote of the Owners.

Section 13.8 **Rights and Duty of Unit Owner to Insure.** Each Unit Owner shall provide insurance covering his personal property and all other property and improvements within his Unit, Owner-caused damage to the Common Area, and the cost of repair or replacement of the Unit and damaged items, including, but not limited to, any improvements made by the builder, an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which such Owner is responsible. The Association shall not be liable to any Owner or his or her Tenants, Guests or others, for damage to or loss of any such Unit, property, or the cost of repair or replacement of any damaged property or portions of such Owner's Unit or Exclusive Use Common Area or Special Use Common Area, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

Nothing herein shall preclude any Unit Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Unit or elsewhere upon the Project. All such other policies as may be carried by Unit Owners shall contain waivers of subrogation, of claims against the Association, the Board, the Officers of the Association, and all other Unit Owners. Such other policies shall not adversely affect or diminish any liability under any insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by the Unit Owner, such Unit Owner shall assign the proceeds of such insurance carried by it to the extent such reduction to the Association for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 13.9 **Notice of Expiration Requirement.** All of the policies of insurance described herein shall contain a provision that said policy or policies shall not be cancelled or terminated, or expired by their terms, without sixty (60) days prior written notice to the Board, Unit Owners and their respective mortgagees (provided, that such Unit Owners or mortgagees have filed written requests with the carrier for

such notice) and every other person in interest who shall have requested such notice from the insurer.

Section 13.10 **Insurance Premiums.** Insurance Premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be regular or special assessments levied by the Association.

Section 13.11 **Trustee Policies.** The Association is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies provided for in Section 13.1 of this Article shall be paid to the Board as Trustees. The Board shall have full power to receive and account for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair and replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article XV of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation by mortgagees who have filed written requests under Section 13.2 to the extent they desire. Any three Directors may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

Section 13.12 **Actions as Trustee.** Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Unit Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification all such insurance, in a manner satisfactory to mortgagees holding at least sixty percent (60%) in amount of aggregate principal indebtedness then outstanding, under all mortgages of which the Board has been furnished written notice as provided in Section 13.9 of this Article. Duplicate originals of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all mortgagees who have requested the same in writing.

Section 13.13 **Annual Insurance Review.** The Board shall review at least annually the insurance carried by it and for the purposes of determining the amount of casualty and fire insurance referred to in Section 13.1 above, the Board shall obtain an appraisal of the full replacement value of the buildings and improvements in the project, except for foundations and footings, without deduction or depreciation.

Section 13.14 **Required Waiver.** All policies of physical damage insurance shall provide for waiver of the following rights to the extent that the respective insurers would have the rights without such waivers.

- A. Subrogation of claims against the Tenants of the Unit;

- B. Any defense based on co-insurance;
- C. Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- D. Any invalidity, other adverse effect, or defense on account of any breach of warranty or condition caused by the Association, any Unit Owner or any Tenant of any Unit Owner or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;
- E. Any right of the insurer to repair, rebuild or replace and, in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance the lesser of the replacement value of the improvements insured or the fair market value thereof;
- F. Notice of the assignment of any Unit Owner of its interest in the insurance by virtue of a conveyance of any Unit; and
- G. Any right to require any assignment of any mortgage to the insurer.

Section 13.15 **Insurance Disclosures.** The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

Section 13.16 **Interior Damage.** Notwithstanding any other provision in the Governing Documents, to the extent not covered by the Association's coverage, each Owner shall be solely responsible for causing the repair or replacement of any damage, including water damage, to any and all interior items of his or her Unit, Common Area or other Units, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, cabinets, tile, carpet, and fixtures. An Owner shall obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property due to whatever cause or source, or the cost of repair or replacement of damaged items for which such Owner is responsible.

Section 13.17 **Deductibles for Association Policies.** The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- A. Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owner's real or personal property, or other property for which the Owner is responsible ("Owner Property").

- B. The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal property owned by the Association or for which the Association is responsible (“Association Property”).
- C. If the damage or loss occurs to any Owner Property and any Association Property, or to more than one Owner’s Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party’s cost of repair to the total cost of repair.
- D. The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or Resident, Guest, Tenant or invitee of an Owner or is the Owner’s responsibility pursuant to Section 4.18 herein, such Owner shall be liable for the full amount of the deductible.

ARTICLE XIV PARTITION

Section 14.1 **Partition Prohibited.** Exceptions. Owners are prohibited from partitioning or in any other way severing or separating any part of the ownership of a Unit from any of the other part of the ownership of a Unit, except upon the showing that:

- A. Three (3) years after damage or destruction to the Development which renders a material part thereof unfit for its use prior thereto, the Development has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or,
- B. Three-quarters (3/4) or more of the Development is destroyed or substantially damaged and Owners holding in the aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Development; or,
- C. The Development has been in existence in excess of seventy-five (75) years, it is obsolete, and Owners holding in the aggregate more than a fifty (50%) interest in the Common Area are opposed to repair or restoration of the Development.

If any of the forgoing conditions are met the net proceeds from the sale and any proceeds of insurance carried by the HOA must be divided among the Units within Development equally. Nothing herein may be deemed to prevent a judicial partition as between co-Tenants. No Unit may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Unit.

Section 14.2 **Power of Attorney.** Owners grant the HOA an irrevocable power of attorney to sell the Development for the benefit of all the Owners upon partition as described in this Article. This power of attorney, however, does not apply to the Secretary, Department of Veterans Affairs, or an officer of the United States of America.

ARTICLE XV

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

Section 15.1 **Common Area Damage.** If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

- A. If the insurance proceeds equal at least eighty-five percent (85%) of cost of repairing or rebuilding, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.
- B. If the insurance proceeds are less than eighty-five percent (85%) of cost of repairing or rebuilding, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (A) above. If said Owners do not so agree, then all insurance proceeds shall be paid to the account of the Association to be held for the benefit of the Owners and their Mortgagees as their respective interests shall appear.
- C. Anything in the immediately preceding paragraph to the contrary notwithstanding, the Board shall contract for such repair or rebuilding of Common Area which consists of building(s) containing Living Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Living Units in said building(s) agree to the repair or restoration of said buildings.
- D. If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the same proportion the Condominiums are assessed for regular assessment amounts to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 15.2 **Condemnation.** If any portion of the Condominium Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then:

- A. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he and his Mortgagee shall be divested of all further interest in the Condominium Property if such Owner shall vacate his Living Unit as a result of such taking. In such event said Owner shall grant his interest in the Common Area, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.
- B. In the event of any taking of the Common Area, the Owners of the Common Area, and their Mortgagees, shall be entitled to receive the award for such taking in proportion to the interest of each in the Common Area; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same conditions and limitations as provided above in Section 1 of this Article XV for determining whether to rebuild or repair following damage or destruction.

ARTICLE XVI

DAMAGE AND DESTRUCTION OF LIVING UNITS

Section 16.1 **Destruction of Living Unit.** In the event of damage or destruction of any Living Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.

ARTICLE XVII

GENERAL PROVISIONS

Section 17.1 **Notice to Individual Owners.** Notice to Owners other than to the entire membership must be given by first-class mail sent to the address to which assessment notices are sent, within a reasonable timeframe based upon the subject matter of the notice. Notices sent in this manner are presumed delivered. Owners are solely responsible for updating the Association's records to reflect their current mailing address for official Association mail.

Pursuant to California Civil Code Section 1363, when the Board of directors is to meet to consider or impose discipline upon a member, the Board shall notify the Member in writing, by either personal delivery or first-class mail, at least ten (10) 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 a Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. If the Board imposes discipline on a Member, the Board shall provide a notification of the disciplinary action by either personal delivery or first-class mail to the Member within fifteen (15) days following the action. A disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of this subdivision. Notwithstanding the foregoing or any other provision of these CC&Rs, all notice requirements are waived by any acknowledgment of receipt of notice.

Section 17.2 **Annexation by Association.** Additional property may be annexed to the Development or to this Declaration upon the vote or written assent of seventy-five percent (75%) of the Owners. Upon approval, the property may be annexed to the terms of these CC&Rs, without alteration, via a Declaration of Annexation verifying the necessary approval, identifying the property to be annexed, and upon the recordation of the Declaration of Annexation with the County of San Diego.

Section 17.3 **Enforcement.** The HOA and any Owner have the right to enforce the Governing Documents. Failure by the HOA or any Owner to enforce any covenants or restrictions may not be deemed a waiver of the right to do so thereafter. In the event the Association or any Owner commences litigation to enforce these governing documents, the prevailing party shall be entitled to costs of suit, including attorneys' fees.

Section 17.4 **Severability.** If any provision in these CC&Rs is void or becomes invalid or unenforceable in law or equity or by judgment or court order, the remaining provisions shall remain in full force and effect, to which limited extent only, this Declaration shall be deemed severable.

In the case of any conflict between the Articles of Incorporation and these CC&Rs, the Articles of Incorporation shall control; in the case of any conflict between these CC&Rs and the Bylaws or Rules, the CC&Rs shall control. In case any of these CC&Rs conflict with the provisions of the *Davis-Stirling Act*, the provisions of the statute shall control unless the statute defers to the CC&Rs or Bylaws.

Section 17.5 **Amendments.** Pursuant to the minimum requirements outlined California Civil Code Section 1355(b), this Declaration may be amended at any time, and from time to time, via approval by any number of Owners representing greater than fifty percent (50%) of the Membership's total voting power; provided, however, that if any provision of this declaration requires a greater or lesser percentage of the voting rights of Members in order to take any action under such provision, the

same percentage of the HOA shall be required to amend or revoke such provision. Any amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California.

Section 17.6 **Required Amendments.** If any law applicable to the Development is enacted after the date of recording of these CC&Rs which directly contradicts, restricts, limits or changes any provision contained herein, these CC&Rs will be deemed amended by operation of law. Any provision herein to the contrary notwithstanding, if an amendment occurs by operation of law the Board may, by unanimous written consent, cause a document describing the amendment by operation of law to be distributed to the Members and recorded with the San Diego County Recorder's Office as an amendment to these CC&Rs.

Section 17.7 **Amendment of Technical Errors.** Any technical errors (e.g. typographical errors, numbering, citations, omission of exhibit(s), etc.) associated with the restatement process may be corrected by unanimous vote of the Board of Directors without the need to obtain Membership approval, and the Board may then approve the re-recording of the entire document or any amendment thereto.

Section 17.8 **Extension of Declaration.** This restated Declaration will run with and bind the land as an equitable servitude for a term of twenty (20) years from the date of recording, and automatically be extended for successive periods of ten (10) years, unless all Owners have executed and recorded a written instrument in which it is agreed that these CC&Rs terminate.

Section 17.9 **Resident Relocation.** Notwithstanding any other provision of these CC&Rs, no Owner or Resident shall be entitled to the payment of or reimbursement for relocation costs of any kind if they are forced to vacate their Unit so that repairs or maintenance of any kind may be made to the Unit, Exclusive Use Common Area and/or Common Area, regardless of the cause of the work.

NORMANDY BY THE SEA COMMUNITY ASSOCIATION
EXHIBIT “A”
REPAIR & REPLACEMENT MATRIX

The following is a listing of the items within the development for which Owners and the Association are responsible to maintain, repair and replace per this exhibit to the Declaration of Covenants, Conditions and Restrictions. This does not eliminate the Owner’s responsibility to request and receive architectural approval pursuant to the Governing Documents or supersede the Owner’s obligations under the Governing Documents. This document shall control if there is a conflict with any other Governing Document concerning the maintenance, repair or replacement of any item within the development.

COMPONENT(S)	OWNER	ASSOCIATION
Appliances, Built-in	X	
Appliances, Free Standing	X	
Bathtub and Overflow	X	
Cabinets	X	
Ceilings, Unit Interior Surfaces	X	
Common Area Improvements & Maintenance		X
Doors, Unit Entry: Frame and Door	X	
Doors, Unit Entry: Locks and Hardware	X	
Doors, Unit Entry: Painting of Exterior Surface		X
Doors, Unit Entry: Painting of Exterior Surface (Owner/Tenant damaged)	X	
Doors, Unit Entry: Painting of Interior Surface	X	
Doors, Building Entry		X
Doors, Building Interior		X
Drywall, Unit Interior: Repair or Replace	X	
Electrical Panel/Circuit Breakers, Unit Interior	X	
Electrical Switches, Sockets, Wall Plates, Unit Interior	X	

COMPONENT(S)	OWNER	ASSOCIATION
Electrical Wiring, Unit Interior (to the point that it joins the electric meter owned by the electric company)	X	
Electrical Panel and Wiring, Common Area		X
Exhaust Fans, Kitchen, Bath, etc.	X	
Exterior Building Surfaces		X
Fences, Common Area		X
Floor Coverings, Unit Interior	X	
Garbage Disposal	X	
Gas Lines, Common Areas		X
Gutters and Downspouts		X
Heating and Ventilation Systems Servicing a Unit	X	
Insulation, Exterior and Common Area Walls		X
Insulation, Unit and Party Walls	X	
Interior Unit Surfaces	X	
Landscaping, Common Area		X
Lighting Fixtures, Common Areas and Building Exterior		X
Lighting Fixtures, Unit Interior	X	
Lightwell, Door: From Unit to Lightwell	X	
Lightwell, Door: From Hallway to Lightwell		X
Lightwell, Door: From Hallway to Lightwell (if modified from original construction)	X	
Lightwell, Drains and Floor (if modified from original construction)	X	
Lightwell, Drains and Floor: Original Construction		X
Painting, Unit Interior	X	

COMPONENT(S)	OWNER	ASSOCIATION
Patio/Balcony /Deck: Membranes and Waterproofing		X
Patio/Balcony /Deck: Railings: Painting, Maintenance and Replacement		X
Patio/Balcony/Deck: Doors: Waterproofing and Caulking	X	
Patio/Balcony/Deck: Doors: Flashing*	X	X
Patios/Balcony/Deck: Doors: Frames, Tracks, Hardware and Screens	X	
Plumbing and Drains, Common Areas		X
Plumbing Drains and Drainage Systems Servicing a Unit (to the point where they tie into a common pipe serving two or more Units)	X	
Plumbing Lines that Serve Two or More Units		X
Plumbing Fixtures, Unit Interior: Toilets, Tubs, Sinks, Faucets, etc.	X	
Roof, Flashing and Other Components		X
Roof, Shingles and Tiles		X
Roof, Underlayment/ Deck/ Substrate		X
Roof Vents		X
Sewer Lines, Common Use		X
Sidewalks, Common Areas		X
Slab, Concrete		X
Spraying, Unit Household Pests	X	
Spraying, Common Area Pests		X
Windows: Flashing, Waterproofing, and Caulking	X	
Windows: Flashing*	X	X
Windows: Frames, Tracks, Hardware, Screens	X	

*Depending upon who installed flashing