

**CC&Rs (Required Civil Code Sec. 4525)**  
**Park Land of Monterey, Inc.**

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**PARK LAND OF MONTEREY  
SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**PARK LAND OF MONTEREY**  
**SECOND AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

The "First Amended Declaration of Covenants, Conditions and Restrictions" recorded on October 11, 1967, as Reel 526, Page 35, et. seq., Monterey County Official Records, as amended by Amended Declaration of Covenants, Conditions and Restrictions Park Land of Monterey, Inc. (collectively, "Original Declaration") is amended pursuant to the vote of seventy-five percent (75%) of the Members of the Association pursuant to Section 9 of said Original Declaration.

The "Amended and Restated Declaration of Covenants, Conditions and Restrictions" recorded on October 22, 1996, as Document Number 63621, Monterey County Official Records (the "Amended and Restated Declaration") is amended pursuant to the vote of a majority of the total voting power of the Association pursuant to Section 8.4 of said Amended and Restated Declaration.

By this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Second Amended and Restated Declaration"), the Members of the Association intend to, and do supersede the Amended and Restated Declaration and all amendments, in their entirety. Upon execution and recordation of this Second Amended and Restated Declaration in the Office of the Recorder of the County of Monterey, State of California, this Second Amended and Restated Declaration shall be in full force and effect and the Amended and Restated Declaration, shall be amended as follows:

**THIS SECOND AMENDED AND RESTATED DECLARATION**, made on the date hereinafter set forth, by a vote of a majority of the total voting power of the Association, is made with reference to the following facts:

A. This Second Amended and Restated Declaration shall bind and benefit that certain property located in the City of Monterey, County of Monterey, State of California, more particularly described as Lots 1 through 60, and Parcel "A" as the Common Area, as shown on the Subdivision Map entitled "Tract No. 557 Del Monte Beach Townhomes," filed for record in the Office of the Recorder of the County of Monterey, State of California, on October 11, 1967, in Book 9 of Maps Cities and Towns at page 35.

B. The development shall be referred to as the "Project" as defined in section 1.26.

C. The Members of the Association intend by this Amended Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots.

**NOW, THEREFORE**, the Members hereby declare that all of the Property described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Property for the purpose of enhancing and protecting the value and



desirability of the Property and every part thereof, and which shall run with the Property and be binding on the Members and their successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

1.1 "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.3 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Owner as determined by the Association and shall include regular and special assessments.

1.4 "Association" shall mean and refer to PARK LAND OF MONTEREY, INC., a California nonprofit mutual benefit corporation, the Members of which are the Owners of Lots in the Project.

1.5 "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.6 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.7 "City" shall mean the City of Monterey, California.

1.8 "Common Area" shall mean and refer to the portions of the Property (and all improvements thereon) owned by the Association for the common use and enjoyment of the Owners consisting of Parcel "A," described on said Map. In addition, Common Area shall include that area of approximately 19,760 square feet which the Association rents from the City and such access areas or easements from Del Monte Avenue as to which the Association may be title holder, lessee or grantee of an easement.

1.9 "Common Expenses" means and includes the actual and estimated expenses of operating the Association and carrying out its duties and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.10 "Declaration" shall mean and refer to this Amended Declaration, as amended or supplemented from time to time.

1.11 "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."

1.12 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.10C.

1.13 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 9.10C.

1.14 "Exterior Building" shall mean the entire building *up to and including* the interior unfinished surfaces of the perimeter walls, e.g. drywall, sub-floors, ceilings, windows and doors of each residential dwelling.

1.15 "First Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Lot.

1.16 "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

1.17 "Foreclosure" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a *et seq.* or sale by the Court pursuant to California Code of Civil Procedure § 725a *et seq.* and any other applicable law.

1.18 "Lot" shall mean and refer to each Lot or parcel shown on the Map with the exception of the Common Area.

1.19 "Map" shall mean and refer to that Map entitled "Tract No. 557 Del Monte Beach Townhouses," filed for record the 11th day of October, 1967, in Book 9 of Maps Cities and Towns at page 35, in the records of Monterey County.

1.20 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.21 "Mortgage" shall include a deed of trust as well as a mortgage.

1.22 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.23 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.24 "Owner" shall mean and refer to the person, persons, or entities of record, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Project but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, will be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.25 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.26 "Project" shall mean the Property and all improvements and structures erected or to be erected thereon, subject to this Declaration.

1.27 "Project Documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, and the Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.28 "Property" shall mean and refer to the real property described on the Map.

1.29 "Rules" shall mean and refer to the rules adopted from time to time by the Association pursuant to section 5.2D.

## **ARTICLE II DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS**

**2.1 Description of Project:** The Project is a planned development, consisting of the Common Area, the sixty (60) Lots, and all improvements thereon.

**2.2 Assessments; Dedication of Common Area:** Each of the Lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Common Area(s) as the servient tenement for ingress and egress and support, and for use, occupancy and enjoyment, and for the construction, maintenance and operation of utilities; subject to the following provisions:

A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against the Member's Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or Rules.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the rights of such mortgagee shall be subordinate to the rights of the Members of the Association. No such dedication, transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3) of the total voting power of the Members agreeing to such dedication, transfer or mortgage has been recorded.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, including, without limitation, access, utilities, and parking, which are beneficial to the development of the Property in accordance with the general plan established by this Declaration.

D. The right of the Association to install or have installed a cable or central television antenna system. The system, if and when installed, shall be maintained by the Association or cable television franchisee. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of connecting the same with the master cable television terminal, central television antenna or line. Each Lot shall be subject to an easement in favor of all other Lots and in favor of the entity holding the CATV franchise, to provide for the passage through the Lot and any structure thereon of television connections from any other Lot to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

**2.3 Easements to Accompany Conveyance of Lot:** Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of the Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

**2.4 Delegation of Use:** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, friends and social guests, his tenants, or contract purchasers, who reside within the Project.

**2.5 Owners' Rights and Easements for Utilities:** The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, drainage, water, electric, gas, television receiving, telephone equipment, cables and lines (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the Project, which utility facilities, or any portion thereof, lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said utility facilities, the Owners of any Lots served by said utility facilities, shall have the right of reasonable access for themselves or for utility companies to repair, to replace and generally maintain said utility facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever utility facilities are installed within the Project which serve more than one (1) Lot, the Owner of each Lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Lot.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and the decision of the Arbitrator(s) shall be final and conclusive on the parties, and judgment may be entered thereon in any court having jurisdiction. Any expenses incurred by the Association as a result of its participation in such arbitration or alternative dispute resolution shall be paid by the Owners involved in the dispute equally, or as mutually agreed by the Owners.

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**2.6 Encroachment Easements:** Each Lot as the dominant tenement shall have an easement over adjoining Lots and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications for the Project, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than initial adjustments in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by the Association, the Association's engineer and by the City Engineer. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the certificate of correction.

**2.7 Party Walls:**

**A. General Rules of Law to Apply:** Each wall, footing or foundation that is built as part of the original construction of a residence, is located on the boundary line with an adjacent Lot and either is used in common with the residence on the adjacent Lot or abuts against a similar wall, footing or foundation on the adjacent Lot shall constitute a "party wall." To the extent not inconsistent with the provisions of this section 2.7, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**B. Sharing of Replacement, Repair and Maintenance:** The cost of reasonable replacement, repair and maintenance of a party wall shall be shared by the Owners who make use of the party wall in proportion to such use.

**C. Destruction by Fire or Other Casualty:** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may restore it, and if the other Owners thereafter make use of the party wall, they shall contribute to the cost of restoration thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission proximately caused the damage or destruction, shall bear the full cost of restoration that is not covered by insurance.

**D. Weatherproofing:** Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**E. Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this section 2.7 shall be appurtenant to the land and shall pass to such Owner's successors in title.

**F. Arbitration:** In the event of any dispute arising concerning a party wall, or concerning the provisions of this section, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, or to any other generally recognized system of alternative dispute resolution, and judgment may be entered thereon in any court having jurisdiction. Any expenses incurred by the Association as a result of its participation in such arbitration or alternative dispute resolution shall be paid by the Owners involved in the dispute.

**2.8 Maintenance Easement:** An easement exists in favor of the Association, for the purpose of entering upon the Property to perform such maintenance, if any, as the Association may do in accordance with the provisions of sections 4.14 and 9.11 of this Declaration.

**2.9 Front Yard Maintenance Easement:** An easement shall exist over the front yard of each Lot as the servient tenement in favor of the Association for the purpose of allowing the Association to enter the front yard to maintain the landscaping thereon.

**2.10 Drainage Easements:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot, each Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are reserved for the flow of surface water.

**2.11 Common Utility Meter Easement:** An easement exists over the Common Area as the servient tenement in favor of each other Lot as the dominant tenement for the purpose of installing, maintaining, repairing and replacing any common utility meters and connecting lines installed thereon by the original developer of the Project.

**2.12 Other Easements:** The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Property as shown on the Map.

**2.13 Rights of Entry and Use:** The Lots and Common Area shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or Property located in the Common Area as described in section 5.2E;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in section 9.11;

**2.14 Partition of Common Area:** There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in California Civil Code Section 1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code Section 66499.21, et seq., or any comparable provisions of law, and to vest title to the Property in Owners as tenants in common and order an equitable partition of the Property in accordance with the laws of the State of California.

Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Lot.

**2.15 All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created herein, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement, and when easements referred to herein are subsequently created by grant deeds, such easements are part of the common plan created by this Declaration for the benefit of all- property Owners within the Project.

### ARTICLE III

#### ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

**3.1 Association to Own and Manage Common Areas:** The Association shall own and manage the Common Area in accordance with the provisions of this Declaration, and the Articles and Bylaws.

**3.2 Membership:** The Owner of a Lot shall automatically, upon becoming a Lot Owner, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws.

**3.3 Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of

the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Lot through foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4 Membership and Voting Rights:** Membership and voting rights shall be as set forth in the Bylaws.

#### **ARTICLE IV MAINTENANCE AND ASSESSMENTS**

**4.1 Creation of the Lien and Personal Obligation of Assessments:** Each Owner of each Lot within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Assessments or charges, and special Assessments for purposes permitted herein, such Assessments to be established and collected as hereinafter provided, and

(2) to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2 Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to provide insurance, improvement and maintenance of the



Common Area, and insurance of the homes situated within the Project for the common good of the Project.

**4.3 Assessments:** The Board shall have the power and the duty to levy annual and special Assessments sufficient to meet the Association's obligations under the Project Documents and applicable law.

**A. Annual Assessments:**

**a. Calculation of Estimated Required Funds.** Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the funds required by the Association for such fiscal year to (i) manage, administer, operate, and maintain the Project, (ii) to conduct the affairs of the Association, and (iii) to perform all of the Association's duties in accordance with this Declaration. Such estimate shall include a reasonable amount allocated to contingencies and to a reserve fund for the restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis.

**b. Allocation of Annual Assessment.** The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots.

**c. Payment of Annual Assessments.** Unless the Board shall designate otherwise, annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

**d. Increases in Annual Assessment.** Pursuant to California Civil Code Section 1366(b), except as otherwise provided by law, the Board shall not increase the annual Assessment for any fiscal year above the amount of the annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than 50% of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

**B. Special Assessments:**

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

**b. Allocation of special Assessments.** Special Assessments shall be allocated and assessed among the Lots in the same manner as annual Assessments.

**c. Approval of Special Assessments.** Except in the case of an emergency situation as defined in California Civil Code Section 1366, in any fiscal year the Board may not

levy special Assessments which, in the aggregate, exceed 5% of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than 50% of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

**4.4 Reimbursement Assessment:** The Association shall levy a reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Project Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance. The Association shall also levy a reimbursement Assessment in the event that the Association has expended funds performing emergency repairs as authorized by this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A reimbursement Assessment shall be due and payable to the Association when levied.

**4.5 Enforcement Assessment:** The Board may levy an enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Project Documents shall be deemed to be such an enforcement Assessment), for violation of any of the provisions of the Project Documents. Any enforcement Assessment shall be due and payable to the Association when levied.

**4.6 Failure to Fix Assessments:** The failure or omission by the Board to fix or levy any annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the annual Assessment fixed for the preceding fiscal year shall be the amount of the annual Assessment for the ensuing fiscal year until a new annual Assessment is levied.

**4.7 Offsets:** All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

**4.8 Delinquent Assessments:** Any installment or other portion of an Assessment not paid within thirty (30) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Except as prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which

total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

**4.9 Transfer of Lot by Sale or Foreclosure:** Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to mortgage foreclosure of a first Mortgage shall extinguish the lien of such Assessments (including fees, late charges, fines or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage and except as expressly provided by California law). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such first Mortgage, such acquirer of title, and his successor and assigns, shall not be liable for the Assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer (except for assessment liens recorded prior to the mortgage and except as expressly provided by California Law). No amendment of the preceding sentence may be made without the consent of Owners of Lots to which at least two thirds of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding first mortgages on Lots comprising fifty-one percent (51 %) of the Lots subject to first mortgages. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Lots including such acquirer, and his successors or assigns.

**4.10 Power of Sale:** Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, and does further grant to the Board, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy such lien, except as prohibited by law. The Association or any Owner may purchase the Lot at the sale.

The Board may temporarily suspend the voting rights of a Member (and the rights to use of the recreational facilities) who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

**4.11 Certification of Satisfaction and Release of Lien:** Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall record, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

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

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

A. All property dedicated to and accepted by the County of Monterey or other local public authority and devoted to public use.

B. Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure. Such exemption shall be applicable only during the period in which the Association is record Owner of such Lot.

C. All Common Area.

**4.14 Association Maintenance Responsibility:** The Association shall have the following maintenance responsibilities:

A. Maintenance. The Association shall maintain, repair, and replace (as necessary) the following:

(1) the Common Area, all improvements and landscaping thereon, and all property owned by the Association, including without limitation, recreational facilities, parking areas, driveways, private streets, Common Area irrigation systems, exterior common lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district;

(2) landscaping for each Lot except for private patio areas. Maintenance shall include regular fertilization, irrigation and other garden management practice necessary to promote a healthy, weed free environment for optimum plant growth;

(3) exterior of residence, including roofs, decks and railings; and

(4) removal and replacement of any part of a patio or fence that extends into the Common Area under authority of an easement when access to a utility line underneath such patio or fence is requested by any utility company.

B. Wood-Destroying Pests or Organisms. The Association shall be responsible for conducting all routine termite inspections and all required repairs and maintenance of the Common Area and the residential patios and railings occasioned by the presence of wood-destroying pests or organisms. The Association's obligation to conduct routine terminate inspections of the residential patios and railings does not extend to inspection or repairs required as part of a sale of the residence.

C. Owner Liability. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner, or his or her guest, tenant, Invitee or pet. Any such repairs or replacements not covered by insurance carried by the Association shall be made by the responsible Owner, provided the Board approves the person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall cause the repairs to be made and charge the cost thereof to the responsible Owner, which costs shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by

law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in the Bylaws before the charge may be collected.

**D. Authority for Entry to Residence.** The Association or its agents may enter any residence whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction or replacement for which the Association is responsible or which it is authorized to perform. Although under no obligation to do so, the Board, in its complete and sole discretion may enter or may authorize the Association's agent to enter any residence to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered residence, any other residence or the Common Area. The cost of performing such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the residents as practicable and only upon reasonable advance written notice of not less than 24 hours, except in emergency situations.

**E. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of work. Such cooperation shall include permitting access to an Owner's residence to the extent necessary or convenient (as determined by the Board) for the Association to perform any of its responsibilities pursuant to the Project Documents.

**4.15 Owner Maintenance Responsibility:** Owners shall have the following maintenance responsibilities:

**A. Maintenance.** Each Owner shall, at his or her sole cost and expense, maintain and repair his Lot and all improvements thereon, keeping the same in good condition, save and except for the landscaping which is to be maintained by the Association as provided, in section 4.14A(2). Without limiting the generality of the preceding sentence, each Owner shall be responsible for the following:

(1) Maintaining, repairing, and replacing, paint, wallpaper, plaster, tile and any other finish of the interior surfaces of the ceilings, floors, and walls of the residence;

(2) Maintaining, repairing, and replacing, windows and all screens serving his or her residence;

(3) Cleaning the interior and exterior of all glass surfaces which the Owner is responsible for maintaining, repairing and replacing;

(4) Maintaining, repairing and replacing the internal installations, appliances, equipment, and other features serving his or her residence, even if such installations, appliances or equipment is located wholly or partly outside of such residence, including, without limitation: (i) garbage disposals, (ii) hot water heaters, (iii) ranges, refrigerators, freezers, dishwashers and other kitchen appliances, (iv) light fixtures and light bulbs, (v) heating, ventilation and air

conditioning units, (vi) showers, bathtubs, sinks and toilets, (vii) smoke alarms, and (viii) telecommunications facilities;

(5) Maintaining, repairing and replacing sewer, water, electrical and other utility or plumbing lines from the point where such line serves the individual residence; and

(6) Cleaning and sweeping the patio area that serves his or her residence.

## **ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION**

**5.1 Duties:** In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

**A. Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien after notice and hearing as provided in the Bylaws.

**B. Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

**C. Payment of Expenses and Taxes:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**D. Enforcement:** The Association shall be responsible for the enforcement of this Declaration.

The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, insure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

**5.2 Powers:** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

**A Utility Service:** The Association shall have the authority to obtain water, gas and electric service, and similar services for the Common Area of the Project.

**B. Easements:** The Association shall have authority (by majority vote) to grant easements in addition to those shown on the Map where necessary for utilities, cable television and sewer facilities over the Common Area to serve the Common Areas and Lots, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

**C. Manager.** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

**D. Adoption of Rules:** The Association or the Board may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners, provided such Rules are adopted in accordance with California Civil Code Section 1357.100 et seq., or comparable successor statute.. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

**E. Access:** For the purpose of performing construction, maintenance or repairs, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner thereof, to enter any Lot and the residence thereon, at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

**F. Assessments, Liens, Penalties and Fines:** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof. The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents or Rules. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2D, provided that such schedule is approved by vote or written consent of a majority of all Members. Fines imposed for any specific violation shall not exceed \$1,000 plus attorney's fees for enforcement and collection. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend said period for an additional period or periods in the case of a continuing infraction of violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such assessments in the manner provided in section 4.5.

**G. Enforcement:** The Board shall have the power to enforce this Declaration.

**H. Acquisition and Disposition of Property:** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association.

**I. Loans:** The Board shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**J. Dedication:** The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Association agreeing to such dedication, sale or transfer.

**K. Contracts:** The Board shall have the power to contract for goods and/or services for the Common Areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein. The Association shall not enter into any contracts with an independent contractor until it meets the requirements of section 8.1A(3) herein. The Board may enter into agreements, contracts, and arrangements with any Member for construction or repair work, planting or replanting, care, cleaning, protecting, maintaining or the rendering of maid, telephone, laundry, cleaning of any kind and other special services generally in connection with such Member's residence or Lot; provided the foregoing shall be paid for directly by such Member and shall not be paid from funds derived from the charges and/or Assessments provided for in the Declaration.

**L. Delegation:** The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- (1) to make expenditures for capital additions or improvements chargeable against the reserve funds;
- (2) to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;
- (3) to make a decision to levy monetary fines, impose special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) to make a decision to levy annual or special Assessments; or
- (5) to make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of Assessments.

**M. Water and Trash Service:** The Board shall have the authority (but not the obligation) to acquire and pay for water service and trash service for all homes situated on the



Property. All funds collected from Owners for water service or trash service shall be segregated from all other funds and shall be used for no purpose other than providing water service, and trash service.

**N. Appointment of Trustee:** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale.

**O. Litigation/Arbitration:** The Association, subject to section 9.13 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association. Except in the case of an action to enforce the Project Documents or to collect Assessments (in which case the Board may act by majority vote), the Board of Directors has authority to file a suit, or file a demand for arbitration, or incur litigation costs, or enter into a contingent fee contract with an attorney on behalf of Members, only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

This section shall not be construed to limit the power of the Board to defend the Association and its officers, directors and members against any suit. In any case where the Board determines that the Association's claim will be barred by an applicable statute of limitations by reason of the delay in obtaining the vote required above, and in any case where a quorum of Members other than Declarant was not obtained despite two (2) attempts to call a special meeting following proper notice requirements contained in applicable provisions of the Bylaws, a vote of Members approving the action described above shall not be required, provided that in such case a majority of the entire Board shall approve the action, and the Board shall notify the Members promptly in the manner required by section 9.15 for notices, of the action taken by the Board. In the event the Board files an action in advance of a vote by the Members, in order to avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after action is taken to file the suit, for the purpose of obtaining the approval of the Members of the action taken by the Board. The vote of at least a majority of a quorum of Members shall be required to ratify the Board's action, and in the event of the failure to obtain such approval, the Board shall immediately take all possible steps to settle any suit that has been filed and/or to cause any action that has been filed to be dismissed.

**P. Common Area Improvements:** The Association shall have the authority and power to construct, improve, repair, demolish, remove and reconstruct any and all improvements on or over or under the Common Area not inconsistent with this Declaration, and appropriate for the use and benefit of the Members of the Association, and to charge for the use thereof, provided that the Association shall not include in any assessment, annual or special, the cost of any new capital improvement which exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year in cost to be expended in any one calendar year, unless fifty percent (50%) or more of the voting power of the Association previously shall have approved said expenditure.

**Q. Other Powers:** In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code Section 7140.

## ARTICLE VI ARCHITECTURAL CONTROL

**6.1 Approval of Plans:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with the original color scheme, or to rebuild in accordance with the original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

**6.2 Architectural Control Committee Action:** The Architectural Control Committee shall consist of three (3) members. The Board shall have the power to appoint all of the Architectural Control Committee. Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the Board. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto. In the event the Committee fails to approve or disapprove plans and specifications in writing within sixty (60) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board, shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans and the Owner whose plans are approved shall defend, indemnify and hold the Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval. Any additions or alternations approved and completed after the date of this Declaration, shall be maintained by the Owner of the Lot so improved.

**6.3 Form of Approval:** All approvals and denials of requests for approval shall be in writing except as provided above in section 6.2 with regard to non-action by the Architectural Control Committee. The Architectural Control Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Control Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety. Any denial of a request for approval shall include: (i) an explanation of why the request for approval was denied, and (ii) a description of the procedure for Board review of the denial as set forth in this article and any applicable architectural rules.

**6.4 Landscaping:** No landscaping of any portions of Lots visible from the street or from any Common Area or adjoining Lots shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

**6.5 Structural Integrity:** Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any building.

**6.6 Unauthorized Architectural Changes:** Any Owner who implements a change requiring Architectural Control Committee approval per section 6.1 without prior written approval, will be subject to a \$1,000 fine, and/or injunctive relief, at the option of the Board.

**6.7 Governmental Approval:** Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

## **ARTICLE VII USE RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Property and each Lot therein is subject to the following:

**7.1 Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests. A Lot may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Lot Owners of their Lots and does not include visiting clients. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently.

No trade, business or commercial activity of any kind shall be established, maintained, operated, permitted, or conducted within the Project except:

A. Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Project or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development. The Board may also adopt Rules regulating the conduct of such occupations.

B. Those other businesses which by law must be permitted to be conducted within the Project.

No Lot or Lots or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The

term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof or residence thereon in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Lot or any portion thereof in the Project by any Owner or his or her or its social or familial guests.

**7.2 Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on upon any Lot, or any part of the Property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot.

**7.3 Vehicle Restrictions and Towing:** No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck having carrying capacity of greater than three-quarter (3/4) ton, or van having seating capacity in excess of eight (8) persons, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles are required to be of such size and dimensions so as to fit comfortably within a Parkland of Monterey parking space, and to be able to drive and park without hitting tree branches overhanging the roadways or parking spaces within the project. Permitted vehicles which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No unlicensed motor vehicles shall be operated upon the Project **with the exception of medical vehicles for the handicapped**. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one inch in height.

The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by a resident of the Project. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his or her designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento, California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped

without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

**7.4 Parking:** All Common Area parking spaces shall remain permanently available for Owner and guest parking, subject to Rules. Garage space shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description.

**7.5 Commercial Activity:** No business, professional, or commercial activity of any kind shall be conducted on any Lot except as provided in section 7.1.

**7.6 Use of Common Area:** The Common Area shall be improved and used for the following described uses and no other:

- A. Providing vehicular, pedestrian and utility service access to the Lots, all other portions of the Common Area;
- B. Recreational use by the Lot Owners;
- C. Beautifying and affording privacy to the Lots;
- D. Providing parking facilities serving the Lots and providing facilities and structures necessary to maintain the Lots and Common Area.

There shall be no obstruction of the Common Area nor shall anything be altered or constructed in or removed from or stored in the Common Area without the written consent of the Board.

**7.7 Signs:** No sign of any kind shall be displayed to the public view from any portion of the Project except that this restriction shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Signs which by law cannot be prohibited;
- (c) A single sign of customary and reasonable dimension and design, complying with any applicable Rules and reasonably located on a Lot advertising the Lot for sale or rent;
- (d) Signs required for traffic control and regulation of streets or open areas within the Project as installed or approved by the Board; and
- (e) Such other signs as the Board may, in its discretion, approve. The Board may adopt limitations on such signs including restrictions on the size of the signs, the duration of their posting, and their location.

It is the express purpose and intent of this section to permit the Association's regulation of signs within the Project to the greatest extent permitted by law.

**7.8 Animals:** No animals of any kind shall be raised, bred, or kept on any Lot or in the Common Area except no more than two (2) usual and ordinary household pets, such as dogs or cats, subject to Rules adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Project which result in an annoyance or are obnoxious to other Owners. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his or her dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City of Monterey, or the County of Monterey, by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling the Common Area and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets.

**7.9 Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. Each Owner shall be responsible for removal of garbage from his Lot. No Owner shall place trash, debris or waste material onto the Common Area, except in containers designated for that purpose.

**7.10 Radio and Television Antennas:** No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area or upon any Lot, except (a) those erected, constructed, or maintained by the Association, (b) those expressly approved by the Architectural Control Committee, or (c) those specifically permitted by law. With respect to those outside masts, towers, poles, antennae and satellite dishes specifically permitted by law, the Association shall have the authority to regulate their installation and maintenance to the greatest extent permitted by law. The Owner of each Lot shall be responsible for the repair and maintenance of any outside mast, tower, pole, antenna or satellite installed on his or her Lot and shall indemnify and reimburse the Association for any and all costs and expenses associated therewith, including without limitation, any increased costs incurred by the Association in the performance of its maintenance obligations as specified in Article IV. All fees for use of any cable or satellite dish system shall be borne by the respective Owners, and not by the Association.

**7.11 Basketball Standards:** No basketball standard or fixed sports apparatus shall be attached to the exterior surface of any residence or garage or affixed to any portion of the Common Area.

**7.12 Clothes Lines:** No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over railings shall be allowed.

**7.13 Power Equipment and Car Maintenance:** No power equipment, hobby shops, or car maintenance (other than emergency work and oil changes), or boat maintenance shall be permitted on the Common Area except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

**7.14 Liability of Owners for Damage to Common Area:** The Owner of each Lot shall be liable to the Association for all damage to the Common Area improvements (including landscaping) caused by such Owner or the Owner's agents, occupants, invitees, or pets, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged with the cost of repairing such damage (including interest thereon) as a reimbursement Assessment described in section 4.4.

**7.15 Renting or Leasing of Lots:** Any lease or rental agreement shall be in writing and shall be subject in all respects to the provisions of the Declaration, Articles and Bylaws and to all Rules adopted by the Board and any failure of the tenant to comply with the terms of such documents, shall be a default under the lease, regardless of whether the lease describes the documents. In the event of such a default, the Owner immediately shall take all appropriate steps to cure the default, including, if necessary, eviction of the tenant. Other than the foregoing, there is no restriction in the right of any Owner to lease his Lot. All Owners leasing or renting their Lot for periods of six (6) months or more shall promptly notify the Association Management Company in writing of the names of all tenants occupying such Lot and the address and telephone number where such tenants can be reached.

**7.16 Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept on any Lot or in any improvements constructed thereon or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law.

**7.17 Flags, Pennants, Banners, Etc.:** Only flags and other non-commercial signs, posters or banners, as permitted by California Civil Code Sections 1353.5 and 1353.6, or comparable successor statutes, may be displayed from an Owner's separate interest, except as required for the protection of public health or safety.

**7.18 Garage Sales:** There shall be no garage sale or similar such activity within the Project without prior approval of the Board.

## **ARTICLE VIII INSURANCE**

### **8.1 Association Insurance:**

(A) The Association shall obtain and maintain the following insurance:

(1) a master hazard/casualty policy insuring all improvements, equipment and fixtures on the Project (including the Exterior Buildings of the residences as constructed up to and including the interior unfinished surfaces, e.g. the drywall and sub-floors);

(2) if obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, and the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property; the amount of general liability insurance which the Association shall carry at all times shall be not less than the amount required by California Civil Code Section 1365.7 and Section 1365.9;

(3) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary); the Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) if reasonably obtainable, flood insurance on Common Area improvements and the improvements situated on each Lot;

(6) officers and directors liability insurance in the minimum amounts required by Civil Code Section 1365.7 and 1365.9;

(7) such other insurance as the Board in its discretion considers necessary or advisable; and

(8) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

(B) The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto (except for earthquake insurance, which shall be within the discretion of the Board as provided in section 8.1A(8)). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

(C) Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.



(D) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Lots (including Declarant) and mortgagees, and a cross-liability and severability of interest coverage insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

(E) Except as provided in section 8.1 of the Declaration, an Owner is responsible for the cost of repair of those portions of the Owner's residence which are required to be maintained by the Owner, and the fixtures and personal property located on the Owner's Lot or in the residence.

(F) No Owner shall separately insure the improvements on his or her Lot against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the Owner's personal property and does not cover personal liability for damages or injury occurring on the individually owned Lots..

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

(H) The premiums for any insurance obtained by the Association shall be a common expense of the Association and shall be paid for out of the operating fund of the Association. However, the amount of any deductible relating to any claim covered by insurance obtained by the Association shall be borne by the Owner or Owners of any property affected by any loss covered by such insurance.

## **8.2 Owner Insurance:**

(A) The Association is under no obligation to provide insurance covering the contents of homeowners units, finished surfaces (e.g. paint and flooring), personal property, or provide any liability protection for injury or other damage occurring within a residence.

(B) Each Owner is strongly advised to consult with an insurance agent and to purchase a contents policy (HO6 or equivalent) and a liability policy.

(C) Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners, the Association, and any first Mortgagee of the Owner's Lot.

## ARTICLE IX GENERAL PROVISIONS

**9.1 Violations as Nuisance:** Every act or omission constituting or resulting in a violation of any of the provisions of the Project Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

**9.2 Violation of Law:** Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

**9.3 Owners' Responsibility for Conduct and Damages:** Each Owner shall be fully responsible for informing the members of his or her household and his or her tenants, contract purchasers, contractors and guests of the provisions of the Project Documents, and shall be fully responsible for the conduct, activities, any Project Document violation of any of them, and for any damage to the Project or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Project Documents shall be joint and several.

**9.4 No Avoidance:** No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities, if any, or by abandonment of his or her Lot.

**9.5 Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any action brought to enforce the Declaration, the Articles, the Bylaws, or the Rules, and in any action brought to challenge or appeal any action taken by the Association, the Board, or any committee appointed by the Board, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees.

**9.6 Inadequacy of Legal Remedy:** Except for the non-payment of any Assessment levied pursuant to the provisions of Article IV of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Project Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Project Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board of Directors, or by any Owner or by their respective successors in interest.

**9.7 Invalidity of Any Provision:** Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.8 Term:** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**9.9 Amendments:** This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Monterey. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

**9.10 Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot made in good faith and for value (except to the extent specifically provided by California law), but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or Trustee's Sale, or otherwise. Notwithstanding any provision in this Declaration to the contrary, First Lenders shall have the following rights:

**A. Copies of Project Documents:** The Association shall make available to Owners and First Lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles or Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

**B. Audited Statement:** Any holder of a first mortgage shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or

Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, or Eligible Insurer or Guarantor, as applicable;

(2) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a first mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

(3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.10D.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.15.

**D. Consent to Action:**

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Project Documents:

(a) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the Lot Owners subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a planned unit development project;

(b) The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Lots into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition or any restrictions on the leasing of Lots; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; (xi) restoration or repair of the

Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (xii) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition of amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested.

(2) Unless the holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each first mortgage or deed of trust owned), or two-thirds (2/3) of the Owners of the individual Lots in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Project, or abandon, partition, subdivide, encumber, sell or transfer the Common Area or Property owned directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Property shall not be deemed a transfer within the meaning of this clause); or

(b) change the method of determining the obligations, Assessments or dues or other charges which may be levied against an Owner; or

(c) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of residences, the exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

(d) fail to maintain the hazard insurance required to be maintained under section 8.1A(1); or

(e) use hazard insurance proceeds for losses to any Association Common Area property for other than the repair, replacement or reconstruction of such Common Area property.

**E. Reserves:** Association dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and the Assessments therefor shall be payable in regular installments rather than by special Assessments.

**F. Priority of Liens:** Any First Lender who obtains title to a Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Lot's unpaid Assessments and fees, late charges, fines or interest levied in connection therewith which accrue prior to the acquisition of title to such Lot by the mortgagee (except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all Project Lots including the mortgaged Lot, and

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except for assessment liens recorded prior to the mortgage and except as specifically provided by California law).

**G. Distribution of Insurance or Condemnation Proceeds:** No Owner or any other party shall have priority over any rights of First Lenders pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area property.

**H. Termination of Professional Management:** When professional management has been previously required by the Project's documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of Owners of Lots to which at least two-thirds of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages.

**I. Payment of Taxes or Insurance by Lenders:** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property and First Lenders making such payment shall be owed immediate reimbursement therefor from the Association, provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

**9.11 Owner's Right and Obligation to Maintain and Repair:** Each Owner shall, at his or her sole cost and expense, maintain and repair his Lot and all improvements and landscaping thereon, keeping the same in good condition, save and except for the landscaping which is to be maintained by the Association as provided, in section 4.14A.

In the event an Owner of any Lot shall fail to maintain his Lot and the improvements and landscaping thereon as required herein, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall immediately be paid to the Association by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

**9.12 Damage or Destruction:**

If any Project improvements (including a residence or landscaping) are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total

voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvement within a reasonable time as determined by the Board, a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.3B, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

In the case of damage or destruction of an individual residence whether by fire, earthquake or other causes, the owner(s) of that lot and residence are responsible for the cost of reconstruction that is not covered by insurance or is within the deductible amount. If an owner fails to pay the cost of reconstruction, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the owner(s) for the cost thereof and to enforce the assessment as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Lot equal in amount to such pre-emption, and shall enforce such Assessment in accordance with sections 4.3 and 5.2F hereof. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

a) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

b) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principle subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

c) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

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d) That no part of the cost of the services and materials described in the foregoing paragraph A has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

e) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence and be in accordance with a schedule to be agreed between Owner, contractor(s) and the Board, subject to delays that are beyond the control of the party responsible for making the repairs. Notwithstanding the foregoing, the Owner immediately shall take such steps as may be reasonably required to secure any hazardous conditions resulting from the damage or destruction, and to screen any unsightly views.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in sections 9.11, 4.15 and 4.14, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to sections 9.11, 4.15 and 4.14. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to any appropriate alternative dispute process.

If the Association undertakes any work which sections 9.11 and 4.15 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the residence or the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed to the extent provided by law.

If the improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material



alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to their respective fair market values of their Lots as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. For the purpose of effecting a sale under this section 9.12, each-Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction, the Board has failed to make a determination as to a material alteration, any Owner may file an action in a court of appropriate jurisdiction for an order requiring the sale of the Project and distribution of the proceeds in accordance with this section 9.12.

Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this section 9.12, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

**9.13 Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interests of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof.

**9.14 Owners' Compliance:** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions,

decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys fees, or (5) any combination of the foregoing.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

**9.15 Notice:** All notices and documents distributed by the Association to the Members shall be delivered by one or more of the methods described in California Civil Code Section 1350.7, or comparable successor statute.

**9.16 Costs and Attorneys' Fees:** In the event the Association shall take any action to enforce any of the provisions of the Project Documents or shall determine that any Member or members of his or her household or his or her tenants, contract purchasers, guests, invitees or household pets have violated any provision of the Project Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation and/or in enforcing any Project Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a reimbursement Assessment as provided in section 4.4 of this Declaration.

**9.17 Indemnification:** Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her contract purchasers, tenants, guests or invitees, to (i) indemnify each and every other Owner for, (ii) to hold each and every other Owner harmless from, and (iii) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

**9.18 Fair Housing:** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Lot to any person of a specified race, sex, sexual preference, adulthood, marital status, color, religion, ancestry, physical handicap, or national origin.

**9.19 Number; Gender:** The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

**9.20 Alternative Dispute Resolution:** The Association shall comply with California Civil Code Sections 1369.510 through 1369.590 and Civil Code Sections 1363.810 through 1363.850 shall be required with respect to any dispute subject to such sections.

**CERTIFICATION**

I hereby certify and declare, under penalty of perjury, that the foregoing Amendment has been approved by the vote of no less than a majority of the total voting power of the Association.

Executed at Monterey, California, on this day of

**PARK LAND OF MONTEREY, INC.**

**By:**  
**President**

**By:**  
**Secretary**

**STATE OF CALIFORNIA**

**COUNTY OF MONTEREY**

On \_\_\_\_\_ before me, \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_