

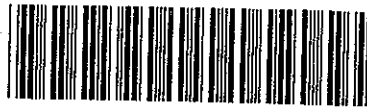
**Woodside Commons  
Condominium Association  
First Restated CC&Rs &  
First Restated Bylaws**

**NOTICE REGARDING  
DISCRIMINATORY RESTRICTIONS**

(California Government Code 12956.1)

**In accordance with California Government Code 12956.1 the Association includes with this governing document the following information:**

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



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Homeowners' Association

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4/30/2001  
8:50 AM

**WOODSIDE COMMONS CONDOMINIUM ASSOCIATION**

**FIRST RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
&  
FIRST RESTATED BYLAWS**

**MASTER TABLE OF CONTENTS**

**FIRST RESTATED DECLARATION.....6**

**RECITALS.....6**

**ARTICLE 1. DEFINITIONS .....6**

    1.1 "Assessments".....6

    1.2 "Association".....7

    1.3 "Board" or "Board of Directors".....7

    1.4 "Condominium".....7

    1.5 "Condominium Plan".....7

    1.6 "Emergency".....7

    1.7 "Governing Documents".....7

    1.8 "Governmental Regulations".....7

    1.9 "Mortgage".....7

    1.10 "Mortgagee".....7

    1.11 "Occupant".....7

    1.12 "Owner".....7

    1.13 "Percentage Interest".....7

    1.14 "Property".....7

    1.15 "Reasonable Entry Notice".....8

    1.16 "Rules".....8

    1.17 "Utilities".....8

**ARTICLE 2. PROPERTY RIGHTS.....8**

    2.1 BOUNDARIES.....8

    2.2 DIVISION OF PROPERTY.....8

        A. Unit.....8

        B. Common Area.....8

        C. Restricted Common Area.....8

        D. Condominium.....8

2.3	NO SEVERANCE OF CONDOMINIUM INTERESTS.....	9
2.4	NO FURTHER SUBDIVISION.....	9
2.5	OWNER'S UTILITY RIGHTS AND EASEMENTS .....	9
2.6	OWNER'S OTHER EASEMENTS.....	9
<b>ARTICLE 3. ASSOCIATION POWERS AND DUTIES .....</b>		<b>9</b>
3.1	AUTHORITY OF BOARD.....	9
3.2	GENERAL POWERS OF ASSOCIATION.....	9
3.3	PAYMENT OF EXPENSES .....	9
3.4	CONTRACTS.....	9
3.5	LOANS.....	9
3.6	ACQUISITION AND SALE OF PROPERTY.....	10
3.7	UTILITY SERVICE.....	10
3.8	GRANTING EASEMENTS.....	10
3.9	ASSOCIATION'S EASEMENT FOR ACCESS.....	10
3.10	ADOPTION OF RULES.....	10
3.11	DUTY TO REVIEW FINANCIAL STATUS.....	10
3.12	DOCUMENTS TO BE PREPARED AND DISTRIBUTED.....	10
3.13	REQUIREMENT FOR RESERVE STUDY.....	12
3.14	DUTY TO PROVIDE DOCUMENTS TO OWNER.....	13
3.15	SEGREGATION OF OPERATING AND RESERVE FUNDS.....	13
3.16	EXPENDITURES AND TRANSFERS FROM RESERVE ACCOUNT.....	13
3.17	AVOIDANCE OF TAXABLE INCOME.....	14
3.18	MECHANICS LIENS.....	14
3.19	ENFORCEMENT.....	14
3.20	NOTICE AND HEARING.....	14
3.21	NONWAIVER OF ENFORCEMENT.....	14
3.22	LEGAL ACTIONS.....	14
3.23	MANAGER.....	14
3.24	NONDELEGABLE POWERS.....	15
3.25	ACTION REQUIRING OWNER APPROVAL.....	15
<b>ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS .....</b>		<b>16</b>
4.1	MEMBERSHIP IN THE ASSOCIATION.....	16
4.2	VOTING RIGHTS.....	16
4.3	SUSPENSION OF RIGHTS.....	16
4.4	APPROVAL OF OWNERS REQUIRED.....	16
4.5	ANNUAL OWNER MEETINGS.....	16
4.6	SPECIAL OWNER MEETINGS.....	16
4.7	LOCATION OF OWNER MEETINGS.....	16
4.8	NOTICE.....	16
4.9	QUORUM.....	16
4.10	PROXIES.....	17
4.11	VOTING REQUIREMENTS.....	18
4.12	ACTION WITHOUT MEETING.....	18
4.13	PARLIAMENTARY PROCEDURE.....	18
4.14	OWNER RIGHT TO SPEAK.....	18
<b>ARTICLE 5. ASSESSMENTS AND LIENS.....</b>		<b>18</b>
5.1	TYPES OF ASSESSMENTS.....	18
5.2	REGULAR ANNUAL ASSESSMENTS.....	18
5.3	SPECIAL ASSESSMENTS.....	18
5.4	PERSONAL REIMBURSEMENT ASSESSMENTS.....	19
5.5	ASSESSMENT INCREASES FOR EMERGENCIES.....	19

5.6	DIVISION OF ASSESSMENTS.....	19
5.7	USE OF ASSESSMENTS.....	19
5.8	DUE DATE FOR PAYMENT OF ASSESSMENTS.....	19
5.9	PAYMENT OF ASSESSMENTS.....	19
5.10	DELINQUENT PAYMENT OF ASSESSMENT.....	19
5.11	ENFORCEMENT ON DEFAULT.....	20
5.12	ASSESSMENTS LIENS.....	20
5.13	ALTERNATIVE RESOLUTION OF ASSESSMENT DISPUTES.....	20
5.14	NO FORECLOSURE BASED ON PENALTIES.....	20
5.15	STATUS CERTIFICATE.....	20
5.16	WAIVER OF STATUTORY PRIORITY.....	21
<b>ARTICLE 6. MAINTENANCE AND ALTERATION.....</b>		<b>21</b>
6.1	OWNER MAINTENANCE RESPONSIBILITY.....	21
6.2	ASSOCIATION MAINTENANCE RESPONSIBILITY.....	21
6.3	ALTERATION OF UNITS.....	22
6.4	ALTERATION OF COMMON AREA.....	22
6.5	WINDOW COVERINGS.....	22
6.6	ASSOCIATION APPROVAL PROCEDURES.....	22
	A. Architectural Rules.....	22
	B. Architectural Committee.....	23
	C. Application For Alteration Approval.....	23
	D. Time Limit For Association Decision.....	23
	E. Standards For Association Decision.....	23
	F. Proceeding With Approved Work.....	24
6.7	NO WAIVER OF FUTURE APPROVALS.....	24
6.8	INSPECTION AND NONCOMPLIANCE.....	24
<b>ARTICLE 7. USE RESTRICTIONS.....</b>		<b>24</b>
7.1	CONDOMINIUM USE.....	24
7.2	DELEGATION OF RIGHTS.....	24
7.3	PARKING AND USE OF MOTOR VEHICLES.....	25
7.4	REMOVAL OF MOTOR VEHICLES.....	25
7.5	NUISANCE.....	25
7.6	ANIMALS.....	25
7.7	GARBAGE DISPOSAL.....	26
7.8	RIGHT TO LEASE.....	26
7.9	CLOTHES LINE.....	26
7.10	STORAGE.....	26
7.11	GARAGE SALES.....	26
<b>ARTICLE 8. INSURANCE.....</b>		<b>26</b>
8.1	GENERAL LIABILITY INSURANCE.....	26
8.2	DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.....	26
8.3	FIRE AND CASUALTY INSURANCE.....	26
8.4	OTHER INSURANCE.....	27
8.5	GENERAL POLICY PROVISIONS.....	27
8.6	INSURER RATING.....	27
8.7	REVIEW OF INSURANCE POLICIES.....	27
8.8	NOTICE OF CHANGE IN INSURANCE COVERAGE.....	27
8.9	INABILITY TO OBTAIN INSURANCE.....	27
8.10	OWNER'S INSURANCE.....	27
8.11	CASUALTY INSURANCE DEDUCTIBLES AND PROCEEDS.....	27

<b>ARTICLE 9. CATASTROPHIC DAMAGE AND CONDEMNATION .....</b>	<b>27</b>
<b>9.1 CATASTROPHIC DAMAGE.....</b>	<b>27</b>
<b>A. Determining Extent Of Damage.....</b>	<b>28</b>
<b>B. Determining Availability Of Repair Funds .....</b>	<b>28</b>
<b>C. Repair Funds 75% Or More Sufficient .....</b>	<b>28</b>
<b>D. Repair Funds Less Than 75% Sufficient.....</b>	<b>28</b>
<b>E. Repair Work.....</b>	<b>29</b>
<b>F. Emergency Repair.....</b>	<b>29</b>
<b>G. Certification Of Intention .....</b>	<b>29</b>
<b>H. Revision Of Documents.....</b>	<b>29</b>
<b>9.2 CONDEMNATION.....</b>	<b>29</b>
<b>9.3 DISTRIBUTIONS.....</b>	<b>29</b>
<b>ARTICLE 10. NOTICE OF TRANSFER.....</b>	<b>30</b>
<b>10.1 NOTICE OF TRANSFER.....</b>	<b>30</b>
<b>ARTICLE 11. MORTGAGE PROTECTION .....</b>	<b>30</b>
<b>11.1 DEFINITION OF ELIGIBLE MORTGAGEE.....</b>	<b>30</b>
<b>11.2 OWNER'S RIGHT TO ENCUMBER.....</b>	<b>30</b>
<b>11.3 NOTICE TO ELIGIBLE MORTGAGEE.....</b>	<b>30</b>
<b>11.4 ACTS REQUIRING CONSENT OF ELIGIBLE MORTGAGEE.....</b>	<b>31</b>
<b>11.5 PRIORITY OF SECURITY INTERESTS IN CONDOMINIUM.....</b>	<b>31</b>
<b>11.6 ACQUISITION OF TITLE BY FORECLOSURE .....</b>	<b>31</b>
<b>11.7 PROHIBITION ON FORECLOSURE OF COMMON AREA.....</b>	<b>31</b>
<b>11.8 RIGHTS TO INFORMATION BY MORTGAGEES.....</b>	<b>31</b>
<b>11.9 FORMER OWNER IN POSSESSION.....</b>	<b>31</b>
<b>ARTICLE 12. GENERAL PROVISIONS OF DECLARATION.....</b>	<b>32</b>
<b>12.1 AMENDMENT OF DECLARATION .....</b>	<b>32</b>
<b>12.2 CERTIFICATION OF APPROVAL AND RECORDATION.....</b>	<b>32</b>
<b>12.3 NOTICE.....</b>	<b>32</b>
<b>12.4 INTERPRETATION.....</b>	<b>32</b>
<b>12.5 SEVERABILITY .....</b>	<b>32</b>
<b>12.6 MEDIATION.....</b>	<b>32</b>
<b>12.7 ARBITRATION.....</b>	<b>32</b>
<b>12.8 DECLARATORY OR INJUNCTIVE RELIEF .....</b>	<b>33</b>
<b>12.9 DISPUTES EXCLUDED FROM ARBITRATION.....</b>	<b>33</b>
<b>12.10 POWER OF ATTORNEY.....</b>	<b>34</b>
<b>12.11 LIMITATION OF LIABILITY.....</b>	<b>34</b>
<b>12.12 OWNER'S ACCOUNTABILITY.....</b>	<b>34</b>
<b>12.13 INDEMNIFICATION.....</b>	<b>34</b>
<b>12.14 NO PUBLIC RIGHTS.....</b>	<b>34</b>
<b>12.15 COSTS AND ATTORNEY'S FEES .....</b>	<b>34</b>
<b>12.16 TERM OF RESTATED DECLARATION .....</b>	<b>34</b>
<b>12.17 STATUTORY REFERENCES.....</b>	<b>34</b>
<b>12.18 CERTIFICATE OF PRESIDENT.....</b>	<b>35</b>
<b>FIRST RESTATED BYLAWS.....</b>	<b>36</b>
<b>ARTICLE 13. NAME AND LOCATION.....</b>	<b>36</b>
<b>13.1 NAME AND LOCATION.....</b>	<b>36</b>

**ARTICLE 14. DIRECTORS..... 36**

- 14.1 POWERS AND DUTIES OF DIRECTORS..... 36**
- 14.2 NUMBER AND QUALIFICATION OF DIRECTORS..... 36**
- 14.3 ELECTION OF DIRECTORS ..... 36**
- 14.4 TERM OF DIRECTORS..... 36**
- 14.5 REMOVAL/RESIGNATION OF DIRECTORS..... 36**
- 14.6 REGULAR BOARD MEETINGS..... 36**
- 14.7 SPECIAL BOARD MEETINGS..... 36**
- 14.8 NOTICE OF BOARD MEETINGS..... 37**
- 14.9 QUORUM AND DECISIONS OF DIRECTORS ..... 37**
- 14.10 NONDIRECTOR ATTENDANCE ..... 37**
- 14.11 EXECUTIVE SESSIONS..... 37**
- 14.12 COMPENSATION OF DIRECTORS..... 37**
- 14.13 COMMITTEES ..... 37**

**ARTICLE 15. OFFICERS..... 37**

- 15.1 TITLES AND DUTIES OF OFFICERS..... 37**
  - A. President ..... 38**
  - B. Secretary..... 38**
  - C. Chief Financial Officer..... 38**
- 15.2 ELECTION OF OFFICERS ..... 38**
- 15.3 TERM OF OFFICERS..... 38**
- 15.4 REMOVAL/RESIGNATION OF OFFICERS..... 38**
- 15.5 COMPENSATION OF OFFICERS..... 38**

**ARTICLE 16. GENERAL PROVISIONS OF BYLAWS..... 38**

- 16.1 PREPARATION, DISTRIBUTION AND INSPECTION OF MINUTES..... 38**
- 16.2 OWNER INSPECTION OF RECORDS..... 38**
- 16.3 DIRECTOR INSPECTION OF RECORDS..... 39**
- 16.4 AMENDMENT OF BYLAWS ..... 39**
- 16.5 FISCAL YEAR..... 39**
- 16.6 CALIFORNIA CORPORATIONS CODE..... 39**
- 16.7 CERTIFICATE OF SECRETARY..... 39**

## WOODSIDE COMMONS CONDOMINIUM ASSOCIATION

### FIRST RESTATED DECLARATION of COVENANTS, CONDITIONS AND RESTRICTIONS

#### RECITALS

**THIS FIRST RESTATED DECLARATION** is made by WOODSIDE COMMONS CONDOMINIUM ASSOCIATION (the "Association") based on the following recitals:

- A.** The Association is a nonprofit, mutual benefit corporation established for the purpose of managing and maintaining a common interest development located in San Jose, Santa Clara County, California (the "Property"), more particularly described as Lot 1 as shown on the subdivision map entitled "WOODSIDE COMMONS, TRACT 7330" recorded in the Office of the County Recorder (the "County Recorder") of Santa Clara County, California.
- B.** This First Restated Declaration, once recorded with the County Recorder, will entirely replace and supersede the original text of the Declaration of Covenants, Conditions and Restrictions previously recorded with the County Recorder on July 6, 1983 in Book H692 at Page 495. This First Restated Declaration is not intended to replace or supersede the Condominium Plan which was recorded with the original Declaration.
- C.** This First Restated Declaration preserves the original uniform plan of property ownership for the Property except as modified herein. Each individual Owner holds title to a separate interest in a Unit and to an undivided interest in the Common Area.
- D.** The entire common interest development is subject to the covenants, conditions, and restrictions in this First Restated Declaration. They are established for the purpose of protecting, preserving and enhancing the value and attractiveness of the Property for the mutual benefit of all Owners. The covenants, conditions and restrictions are enforceable as equitable servitudes, and legally bind and inure to the benefit of all present and future Owners.

#### ARTICLE 1. DEFINITIONS

The following initially capitalized nouns have the meanings set forth below whenever used in the Governing Documents:

**1.1 "Assessments"** means the proportionate costs of operating, maintaining and managing the Property assessed against each Owner. There are three types of assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments.

The characteristics of each are described in Article 5. All such Assessments shall be collectively referred to as "Assessments."

**1.2 "Association"** means the WOODSIDE COMMONS CONDOMINIUM ASSOCIATION. In general, when the Governing Documents provide for a decision or an action by the "Association", the authority to make the decision, or to initiate and supervise the action, resides with the Board and not with the Owners as described in Section 3.1.

**1.3 "Board"** or "Board of Directors" means the Board of Directors of the Association.

**1.4 "Condominium"** means a Unit and an undivided interest in the Common Area together with all associated rights and responsibilities.

**1.5 "Condominium Plan"** means the parcel map dividing the Property into Units, Restricted Common Area and Common Area which was originally recorded with the County Recorder July 6, 1983 in Book H692 at Page 534, and is attached to this First Restated Declaration as Exhibit A.

**1.6 "Emergency"** means an event or condition that threatens imminent peril to the health or welfare of persons, or damage to property, or an emergency situation as defined in Civil Code § 1366 (b).

**1.7 "Governing Documents"** means this First Restated Declaration, the First Restated Bylaws, Articles of Incorporation and Rules of the Association.

**1.8 "Governmental Regulations"** means all applicable laws, ordinances, resolutions, procedures, orders, standards, conditions, approvals, rules and regulations of any governmental entity with authority over the Property.

**1.9 "Mortgage"** means the conveyance of any interest in a Condominium to secure the performance of an obligation. "Mortgage" is synonymous with "deed of trust" for the purposes of the Governing Documents.

**1.10 "Mortgagee"** means a person or entity who holds the beneficial interest in a Mortgage. "Mortgagee" is synonymous with "beneficiary" under a deed of trust.

**1.11 "Occupant"** means a person who sleeps in a Unit during more than fourteen (14) days within any thirty (30)-day period.

**1.12 "Owner"** means the record owner of a Condominium or a contract buyer under an installment land contract with equitable title. "Owner" shall not include those who hold an interest in a Condominium merely as security for the performance of an obligation.

**1.13 "Percentage Interest"** means the interest in the Common Area conveyed with each Unit as shown on the Condominium Plan. Except as specifically provided in the Condominium Plan or this First Restated Declaration, each Owner is equally entitled to use of all Common Area regardless of his/her Percentage Interest.

**1.14 "Property"** means the entirety of the common interest development described in

the Recitals to this First Restated Declaration.

**1.15 "Reasonable Entry Notice"**, under nonEmergency circumstances, means seventy-two (72) hours prior written notice to one of the Occupants of the area to be entered; no notice is required for entry in the case of an Emergency.

**1.16 "Rules"** means the rules adopted by the Board or the Association pursuant to this First Restated Declaration.

**1.17 "Utilities"** means electrical, plumbing, elevators, heating, ventilating, air conditioning, telephone lines, television lines, sprinklers, smoke and/or fire detectors or alarms, burglar alarms, mechanical devices, services or other utilities within the Property, and all incidental pipes, conduits, ducts, wiring, equipment and enclosures.

## **ARTICLE 2. PROPERTY RIGHTS**

**2.1 BOUNDARIES.** The approximate location and physical boundaries of Units, Restricted Common Areas and Common Area are shown on the Condominium Plan. The actual, as-built dimensions of the structures, either as originally constructed, or as reconstructed in accordance with the Governing Documents, shall be presumed the true boundaries and take priority over any legal description in a document, regardless of minor encroachments resulting from constructions, settlement, lateral movement or other causes.

**2.2 DIVISION OF PROPERTY.** The Property is divided as follows:

- A. Unit.** A Unit consists of the area bounded by the interior unfinished surfaces of its perimeter walls, bearing walls, ceilings, floors, windows, and doors, including the paint, tile, carpet or other finishes on the these surfaces. A Unit includes (i) the paint on the interior surfaces of the window and door frames located or exposed within the Unit, (ii) plumbing, heating, air conditioning and electrical fixtures or appliances located or exposed within the Unit, and (iii) elements of water heating, heating, and air conditioning systems serving only the Unit regardless of location. A Unit does not include (i) structural components of walls, ceilings, and floors, or (ii) frames and hardware associated with exterior doors and windows.
- B. Common Area.** The Common Area consists of the entire Property except for the Units.
- C. Restricted Common Area.** Restricted Common Area consists of (i) those portions of Common Area reserved for the exclusive use of an Owner on the Condominium Plan which include patios, decks, parking spaces, and storage areas, and (ii) exterior shutters, awnings, window boxes, doorsteps, stoops, exterior doors, frames and hardware associated with exterior doors, windows, frames and hardware associated with windows, and any other fixture designed to serve only one Unit but located outside the interior boundaries of that Unit.
- D. Condominium.** A Condominium is a Unit together with an undivided interest in the Common Area.

**2.3 NO SEVERANCE OF CONDOMINIUM INTERESTS.** No Owner shall transfer an ownership interest in a Condominium which does not include all associated rights, title and interests described in the Governing Documents. Any transfer in violation of this section is void.

**2.4 NO FURTHER SUBDIVISION.** There shall be no further subdivision of a Condominium into different interests than provided in this First Restated Declaration. This section prohibits timeshare ownership.

**2.5 OWNER'S UTILITY RIGHTS AND EASEMENTS.** Whenever a Utility installed on the Property serves more than one Condominium, the Owner of each Condominium served shall be entitled to the full use and enjoyment of those portions of the Utility which service his/her Unit.

**2.6 OWNER'S OTHER EASEMENTS.** The following are reserved for the benefit of each Owner and Unit: (i) a nonexclusive easement for ingress, egress and support through the Common Area; (ii) a nonexclusive easement for Utilities at reasonable places through the Common Area; and (iii) an easement for minor encroachments resulting from construction, repair, shifting, settlement or movement upon any portion of the Property.

### **ARTICLE 3. ASSOCIATION POWERS AND DUTIES**

**3.1 AUTHORITY OF BOARD.** Except where the Governing Documents specifically provide otherwise, all of the activities of the Association shall be conducted, and all powers exercised, by and under the direction of the Board. Without limiting the generality of the preceding sentence, it is expressly intended that whenever the Governing Documents state that the "Association" may or must make a decision, including the enactment, alteration, or repeal of any Rule, the decision is to be made by a vote of the Board rather than by the vote of the Owners. The only exception to this general rule is when the Governing Documents state that a particular decision or action requires the approval of Owners (as in those items listed in Section 3.25).

**3.2 GENERAL POWERS OF ASSOCIATION.** The Association shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, appropriate or incidental to the exercise of the express powers or duties of the Association for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limitations on those powers set forth in the Governing Documents. The duties and powers of the Association shall include, but are not limited to, those specifically enumerated in this First Restated Declaration

**3.3 PAYMENT OF EXPENSES.** The Association shall promptly pay all undisputed expenses and obligations incurred in the conduct of its business.

**3.4 CONTRACTS.** The Association may contract for goods and services as reasonably necessary to carry out its duties and responsibilities.

**3.5 LOANS.** Subject to the Owner approval requirements of Section 3.25, the Association may borrow funds from a public or private lender as reasonably necessary to carry out its duties and responsibilities. The Association may mortgage, pledge, deed in trust, or hypothecate any of its real or personal property as security for the repayment of a debt.

**3.6 ACQUISITION AND SALE OF PROPERTY.** Subject to the Owner approval requirements of Section 3.25, the Association may acquire, own, improve, operate, maintain, lease, transfer, dedicate for public use or otherwise dispose of its real or personal property provided it is for the mutual benefit of all Owners.

**3.7 UTILITY SERVICE.** The Association shall obtain and maintain Utility service for the Common Area and, to the extent not separately metered or charged, for the Units.

**3.8 GRANTING EASEMENTS.** The Association may grant easements through the Common Area provided they are for the mutual benefit of all Owners.

**3.9 ASSOCIATION'S EASEMENT FOR ACCESS.** The Association shall have an easement for access through every part of the Property, including the Units, after Reasonable Entry Notice, to perform its duties under the Governing Documents. Entry by the Association shall be made with as little inconvenience as possible to the Occupants. Any damage caused by the entry shall be promptly repaired at the expense of the Association.

**3.10 ADOPTION OF RULES.** To the fullest extent permitted by law, the Association may adopt reasonable Rules to implement each and every provision of the Governing Documents. The Association shall furnish copies of the Rules to all Owners and Occupants as soon as possible after adoption and upon written request.

**3.11 DUTY TO REVIEW FINANCIAL STATUS.** Quarterly or more frequently the Association shall:

- A.** Review the most current statements for its operating and reserve accounts;
- B.** Reconcile its operating and reserve accounts;
- C.** Compare the current year's actual reserve revenues and expenses to the budget; and
- D.** Review income and expense statements for its operating and reserve accounts.

**3.12 DOCUMENTS TO BE PREPARED AND DISTRIBUTED.** The Association shall prepare and distribute to each Owner:

- A.** Not less than forty-five (45) nor more than sixty (60) days before the beginning of each fiscal year, a *pro forma* operating budget for the next fiscal year containing at least the following information:
  - (1)** Projected revenues and expenses on an accrual basis;
  - (2)** A reserve summary based upon the most recent review or study which shall be printed in bold type and include:
    - (a)** The current estimated replacement cost, remaining life, and useful life of each major component of the Property which the Association is obligated to maintain;

- (b) As of the end of the fiscal year for which the summary is prepared:
  - (i) a current estimate of the amount of cash reserves necessary to maintain, repair, or replace each major component of the Property which the Association is obligated to maintain, (ii) the current amount of accumulated cash reserves set aside for this purpose; and (iii) the percentage yielded when item (ii) is divided by item (i);
- (c) The method of funding used to defray the cost of future repair and replacement of the major components of the Property which the Association is obligated to maintain;
- (d) A general statement describing the procedures used by the Association to calculate and establish reserves; and
- (e) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves.

The reserve summary prepared pursuant to this section shall not be admissible in evidence to show improper financial management, provided other relevant and competent evidence of the Association's financial condition is admissible.

In lieu of the distribution of the *pro forma* operating budget required by this Section, the Board may elect to distribute to all Owners a summary with a written notice, printed in at least 10-point bold type on the front, that the budget is available at the Association office and that copies will be promptly provided upon request to and at the expense of the Association. Upon request of any Owner, the Association shall promptly send a copy of the budget to the Owner by first-class United States mail at Association expense.

- B. At the time of the distribution of the *pro forma* operating budget, a written summary of Section 12.8 along with the following statement: "Failure of any Owner to comply with the pre-filing requirements of Civil Code Section 1354 may result in the loss of your rights to sue the Association or another Owner regarding enforcement of the Governing Documents."
- C. At the time of the distribution of the *pro forma* operating budget, a summary of the following information regarding the Association's insurance coverage for property damage, general liability, earthquake (if any) and flood (if any):
  - (1) The name of the insurer;
  - (2) The type of insurance;
  - (3) The policy limits; and
  - (4) The amount of the deductibles, if any.

To the extent that this information is provided by the declarations page of an insurance policy, the Association may satisfy the disclosure obligation by distributing copies of the declarations page. The summary shall also include the following statement in at least 10-point boldface type: **"This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."**

- D.** Not more than one hundred and twenty (120) days after the close of the fiscal year, an annual report for the fiscal year containing at least the following information:
- (1) A year-end balance sheet;
  - (2) An operating statement for the year;
  - (3) A statement of changes in financial position from the close of the prior year; and
  - (4) Any information required by Corporations Code §8322 relating to Association transactions in which a Director of the Association personally benefits.

The annual report shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds seventy-five thousand dollars (\$75,000.00). If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an Officer of the Association that the statements were prepared without audit from the books and records of the Association.

- E.** During the sixty (60) day period before the beginning of each fiscal year, a statement describing the Association's policies and practices in enforcing remedies against Owners for default in the payment of Assessments, including recording and foreclosing of liens.

**3.13 REQUIREMENT FOR RESERVE STUDY.** If the replacement cost of the major components of those portions of the Property which the Association is obligated to maintain exceeds one-half (1/2) of the Association's gross annual income excluding reserves, at least once every three (3) years the Association shall conduct a competent and diligent visual

inspection of the accessible areas of such major components and obtain a study of its reserve requirements. The reserve study shall be conducted by a qualified individual or entity, and shall contain at least the following information:

- A. Identification of the major components of the Property which the Association is obligated to maintain and which have a remaining useful life of less than thirty (30) years;
- B. An estimate of the remaining useful life of such components;
- C. An estimate of the cost of repair or replacement of such components at the end of their useful life; and
- D. An estimate of the total annual contribution necessary to defray such cost after subtracting currently available reserve funds.

The Association shall annually review the study and implement necessary adjustments to the reserve component of the Assessments.

**3.14 DUTY TO PROVIDE DOCUMENTS TO OWNER.** Within ten (10) days of the mailing or personal delivery of a written request, the Association shall provide an Owner with a copy of the First Restated Declaration, First Restated Bylaws, Articles of Incorporation, most recent *pro forma* operating budget, and statement of current Assessments and fees. The Association may charge a reasonable fee for these documents which shall not exceed the actual administrative cost.

**3.15 SEGREGATION OF OPERATING AND RESERVE FUNDS.** The Association shall deposit operating funds and reserve funds in segregated accounts. Withdrawal of funds from the reserve account shall require the signatures of either two (2) Directors or one (1) Director and one (1) Officer.

**3.16 EXPENDITURES AND TRANSFERS FROM RESERVE ACCOUNT.** The Association shall not expend reserve funds for any purpose other than maintenance, repair or replacement, or litigation or arbitration involving maintenance, repair or replacement, of items which the Association is obligated to maintain, repair or replace. Reserve funds may also be transferred to the operating account to meet short-term cash flow requirements or other expenses provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid. The transferred funds must be restored to the reserve account within one (1) year of the date of the initial transfer unless the Board makes a written finding, supported by documentation, that a temporary delay would be in the best interest of the Association. The Association shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the transferred funds within the time limits required by this Section. If the Special Assessment exceeds five percent (5%) of the budgeted gross expenses for the fiscal year in which it is levied and is not levied to pay for legal costs associated with litigation or arbitration involving repair, restoration, replacement or maintenance of major components for which the Association is responsible, the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, shall be required. Special Assessments during a fiscal year shall aggregate for the purpose of determining whether the five percent (5%) limit has been reached. The Board may, in its discretion, extend the due date for payment of the Special Assessment, but no such extension shall prevent the Board from pursuing any legal remedy to

enforce collection efforts. When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation or arbitration, the Association shall notify its members of the decision and the availability of an accounting with the next available mailing, and thereafter prepare an accounting of the litigation or arbitration-related expenses at least quarterly and make the accounting available for inspection by members at the Association office.

**3.17 AVOIDANCE OF TAXABLE INCOME.** If possible, all revenue received by the Association shall be handled in such a manner as to avoid taxable income.

**3.18 MECHANICS LIENS.** When a mechanics lien against the Common Area arises from work for which an Owner has contracted, the Association may discharge it and charge any associated cost to the responsible Owner as a Personal Reimbursement Assessment. When a mechanics lien against the Common Area arises from work for which the Association has contracted and there is no dispute with the entity that filed the lien, the Association shall promptly discharge the lien. When a mechanics lien against a Unit arises from work for which the Association has contracted and the Unit Owner so requests, the Association shall promptly discharge it.

**3.19 ENFORCEMENT.** The Association shall exercise prudent business judgment in determining whether, when and how to enforce the Governing Documents. The Association is authorized to impose fines, suspend voting rights, and impose any other disciplinary action for violation of the Governing Documents to the fullest extent permitted by California law. Before a policy involving the imposition of monetary penalties takes effect, and any time such penalties are revised, the Association shall provide each Owner with a written schedule of penalties. Before imposing disciplinary action, the Association must provide the Owner with notice and a hearing. The Association may not impair an Owner's right to use and enjoy his/her Condominium as part of any disciplinary action. Each Owner shall have a right of action against another Owner or the Association for failure to comply with the Governing Documents or with a decision of the Association.

**3.20 NOTICE AND HEARING.** Before taking any action requiring notice and a hearing under the Governing Documents, the Association shall establish and follow procedures that provide all directly affected parties adequate notice and an opportunity to speak and present oral and documentary evidence on their behalf.

**3.21 NONWAIVER OF ENFORCEMENT.** A failure by the Association to enforce any provision of the Governing Documents on one or more occasions shall not be deemed a waiver or estoppel of the Association's right to enforce a similar or other violation of the Governing Documents.

**3.22 LEGAL ACTIONS.** The Association may institute, defend, settle or intervene in litigation, mediation, arbitration or administrative proceedings in any matter relating to the Property including but not limited to (i) enforcement of the Governing Documents, (ii) damage to the Common Area, (iii) damage to other parts of the Property which the Association is obligated to maintain or repair, or (iv) damage to Units or Restricted Common Areas which arises out of, or is integrally related to, damage to the Common Areas or other parts of the Property which the Association is obligated to maintain or repair. The Association shall not be required to conduct inspections, maintain inspection records, exhaust any applicable casualty insurance coverage, or provide an opportunity to cure prior to initiating a civil action.

**3.23 MANAGER.** The Association may employ, or retain as independent contractor, a

manager to perform all or any part of the Association's delegable duties. Any management contract shall be in writing and provide for the right of termination without a termination fee by either party (i) with immediate notice if for cause, or (ii) with contract-specified advance notice of if without cause.

**3.24 NONDELEGABLE POWERS.** The Association shall not delegate the following powers: (i) to borrow money; (ii) to use Association property as security for a debt; (iii) to levy Assessments; (iv) to begin litigation; (v) to make capital expenditures in excess of budgeted amounts; (vi) to impose discipline for violation of the Governing Documents; or (vii) to hold disciplinary hearings.

**3.25 ACTION REQUIRING OWNER APPROVAL.** The Association shall not take the following actions without the approval of seventy-five percent (75%) of the Units:

- A.** Except as otherwise provided in this First Restated Declaration, abandon the Property or terminate Association activities prior to the expiration of the term provided in the Governing Documents;
- B.** Change the allocation of responsibility for maintenance, repair or replacement between the Owners and the Association;
- C.** Change the method of allocating Assessments or voting rights among Units provided further that no Unit's percentage allocation shall be increased without the approval of the Unit Owner;
- D.** Sell, convey or otherwise transfer any Association property having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Property is sold;
- E.** Use the proceeds from an insurance claim or from a settlement or judgment of a legal dispute for any other purpose other than to restore the loss or damage for which the recovery was obtained;
- F.** Alter or amend the provisions of this First Restated Declaration regarding assessment liens, assessment lien priority, insurance, leasing of Units, or repair of the Property following Catastrophic Damage or condemnation;
- G.** Add, annex or withdraw real estate to or from the Property;
- H.** Mortgage, pledge, deed in trust, or hypothecate any of its real or personal property as security for the repayment of a debt;
- I.** Dedicate any portion of Common Area to any public agency or authority;
- J.** Alter, reconfigure or redefine the boundaries of a Unit, Restricted Common Area, or Common Area, provided further that reconfiguring or redefining the boundaries of a Unit or Restricted Common Area shall require the approval of any Owner whose Unit or Restricted Common Area would be reduced in size;

- K.** Change the Percentage Interest of an Owner; or
- L.** Impose any restriction of the free alienation or transferability of a Condominium, other than restrictions on the leasing of Units.

## **ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS**

**4.1 MEMBERSHIP IN THE ASSOCIATION.** Every Owner is a member of the Association while he/she owns a Condominium. Membership ceases when Ownership ceases. Membership is an integral part of, and automatically passes with, the ownership of a Condominium.

**4.2 VOTING RIGHTS.** There is one vote per Unit. Fractional votes by Co-Owners are not allowed. If Co-Owners are unable to agree how to cast the vote for a Unit on a matter, they shall lose their vote on that matter. If a single vote is cast on behalf of a Unit, the vote shall be conclusively presumed to have been cast on behalf of all Owners of the Unit unless written notice contesting the right to vote is actually received by the Secretary before the election is held. If multiple votes are cast on behalf of a Unit, all shall be disregarded.

**4.3 SUSPENSION OF RIGHTS.** The Association may, after notice and a hearing, suspend the voting rights associated with a Unit and right of its Owner to hold office (i) during any period while Assessments associated with the Unit are delinquent and (ii) for a period of up to thirty (30) days for each infraction of the Governing Documents by an Owner or Occupant of the Unit.

**4.4 APPROVAL OF OWNERS REQUIRED.** Whenever the Governing Documents require the approval or consent of a specific portion of the Units, it shall be expressed either by vote at a duly held Owner Meeting or by written consent.

**4.5 ANNUAL OWNER MEETINGS.** Annual Owner Meetings shall be held once each calendar year on a weekday during the first (1<sup>st</sup>) quarter as scheduled by the Board.

**4.6 SPECIAL OWNER MEETINGS.** A Special Owner Meeting shall be promptly scheduled upon a vote of the Board or upon written request of Owners entitled to cast votes of more than five percent (5%) of the Units.

**4.7 LOCATION OF OWNER MEETINGS.** All Owner Meetings shall be held on the Property, unless the Board determines for good reason that the meeting should be held at another location. Owner Meetings held at another location shall be convened at a place as close to the Property as possible.

**4.8 NOTICE.** The Board shall give written notice of Owner Meetings to each Owner at least twenty (20) but not more than sixty (60) days before the meeting. The notice shall specify the place, day and hour of the meeting, matters the Board intends to present for action by the Owners, and, in the case of a Special Owner Meeting, the purpose of the meeting.

**4.9 QUORUM.** Owners may be present at Owner Meetings either in person or by proxy. At any Owner Meeting, the presence of Owners entitled to cast votes of more than fifty percent (50%) of the Units shall constitute a quorum.

- A.** If a quorum is not present at any Owner Meeting, a majority of the voting power present may adjourn the meeting to a date not less than five (5) or more than thirty (30) days later without notice other than an announcement at the meeting, but may transact no other business. If a time and place is not so fixed, notice of time and place of the adjourned meeting shall be given in the manner prescribed for Annual Owner Meetings.
- B.** If a quorum is present at any Owner Meeting, the Owners may continue to conduct business until adjournment notwithstanding the withdrawal of enough Owners to leave less than a quorum provided (i) Owners entitled to cast votes of more than twenty five percent (25%) of the Units Owners remain present, (ii) any action taken must be approved by at least a majority of the voting power required to constitute a quorum, and (iii) action may not include imposition of a Regular Annual Assessment which is more than twenty percent (20%) greater than the Regular Annual Assessment for the immediately preceding fiscal year, or a Special Assessment which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

**4.10 PROXIES.** Each Owner may vote in person or by proxy. All proxies shall be written, dated, signed by the Owner, and filed with the Secretary before the meeting. Every proxy shall be revocable and shall automatically cease upon any of the following events:

- A.** Conveyance of the Owner's Condominium;
- B.** Receipt of notice by the Secretary of the death or judicially declared incompetence of the Owner;
- C.** Arrival of an expiration date stated in the proxy provided it is no later than eleven (11) months from the date the proxy was created;
- D.** Passage of eleven (11) months from date the proxy was created.

Any form of proxy or written ballot distributed by any person to Owners shall:

- E.** Identify the person or persons authorized to exercise it;
- F.** Provide that the vote shall be cast in accordance with the choice specified by the Owner;
- G.** State the length of time it will be valid;
- H.** Afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon.

Any proxy or written ballot distributed to Owners concerning election of directors which names candidates shall:

- I.** Provide that it shall not be mandatory that a named candidate be specified; and

- J. Not be voted if it has been marked in a manner indicating that the authority to vote for the election of directors is withheld.

**4.11 VOTING REQUIREMENTS.** Except when the Governing Documents require the approval or consent of a specific number of Units, a majority of the total voting power represented shall prevail at all Owner Meetings, and decisions made by that majority shall be deemed decisions of the membership of the Association. In the event of a deadlock on a matter, there shall be a second vote, and if a deadlock again results, the matter shall fail.

**4.12 ACTION WITHOUT MEETING.** Any action which may be taken at Owner Meetings, except the election of directors where cumulative voting is a requirement, may be taken without a meeting provided a written ballot describing the proposed action, and providing an opportunity to specify approval or disapproval, is distributed to every Owner entitled to vote on the matter, and Owners are provided a reasonable time to return the marked ballot to the Association. Approval of an action by written ballot shall be valid only if the number of votes cast within the specified time frame equals or exceeds the number required for a quorum at a meeting, and the number of approvals equals or exceeds the number of votes that would be required for approval at a meeting. Ballots shall state the number of responses needed to meet quorum requirements and the number of approvals required for passage. Ballots shall be provided to Owners in the same manner as notice is given under this First Restated Declaration. A vote cast by written ballot may not be revoked.

**4.13 PARLIAMENTARY PROCEDURE.** Owner Meetings shall be conducted in accordance with a recognized system of parliamentary procedure or such other parliamentary procedures as the Association may adopt.

**4.14 OWNER RIGHT TO SPEAK.** Owners shall be permitted a reasonable time to speak at Board and Owner Meetings.

## **ARTICLE 5. ASSESSMENTS AND LIENS**

**5.1 TYPES OF ASSESSMENTS.** There are three types of Assessments: Regular Annual Assessments, Special Assessments and Personal Reimbursement Assessments.

**5.2 REGULAR ANNUAL ASSESSMENTS.** Regular Annual Assessments shall be levied against all Owners to fund the operating and reserve requirements of the Association as projected in the *pro forma* operating budget prepared in accordance with Civil Code §1365.5. If at any time during the fiscal year, the Association determines that the amount of the Regular Annual Assessments is inadequate or excessive, it may revise it for the balance of the fiscal year. The approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, shall be required to retroactively revise the Regular Annual Assessment, increase it more than twenty percent (20%), or decrease it more than ten percent (10%).

**5.3 SPECIAL ASSESSMENTS.** Special Assessments may be levied against all Owners to defray (i) the cost of construction, repair or replacement of capital improvements to portions of the Property which the Association is obligated to maintain, (ii) extraordinary expenses of the Association that were not anticipated in the *pro forma* operating budget, or (iii) any other purpose permitted by law. The approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, shall be required to levy a Special

Assessment that exceeds five percent (5%) of the budgeted gross expenses for the fiscal year in which it is levied. The Special Assessments during a fiscal year shall aggregate for the purpose of determining whether the five percent (5%) limit has been reached.

**5.4 PERSONAL REIMBURSEMENT ASSESSMENTS.** A Personal Reimbursement Assessment may be levied against any Owner to enforce the Owner's obligations and responsibilities under the Governing Documents.

**5.5 ASSESSMENT INCREASES FOR EMERGENCIES.** The limits placed on the increase or decrease of Regular Annual Assessments and Special Assessments do not apply in an Emergency.

**5.6 DIVISION OF ASSESSMENTS.** Portions of Regular and Special Assessments levied to cover the costs of insurance, exterior painting and reserves for exterior painting, and roofing and reserves for roofing, shall be divided among the Units based upon the ratio of each Unit's interior square footage to the total interior square footage of all Units. All other portions of Regular and Special Assessments shall be divided among the Units equally.

**5.7 USE OF ASSESSMENTS.** Revenue raised by Assessments must be used to maintain, preserve and enhance the Property, or to promote the health, safety and general welfare of the Owners.

**5.8 DUE DATE FOR PAYMENT OF ASSESSMENTS.** Regular Annual Assessments shall be assessed against each Owner on the first day of the first month of the fiscal year, and shall be due and payable in equal monthly installments on the first day of each month of the fiscal year, unless the Association adopts some other basis for collection. The Association shall notify each Owner in writing of the amount of the Regular Annual Assessments for the upcoming fiscal year at the same time it distributes the *pro forma* operating budget. In addition, the Association shall notify each Owner in writing of any change in the Regular Annual Assessments or of the levy of any Special Assessment not less than thirty (30) nor more than sixty (60) days before the due date of such changed or Special Assessment. The due date for payment of a Personal Reimbursement Assessment shall be stated in the notice of the assessment and be at least thirty (30) days after notice is given.

**5.9 PAYMENT OF ASSESSMENTS.** Assessments are due and payable on their due dates without deduction or offset for any claim an Owner may have against the Association. Each Assessment, together with authorized charges, is the joint and several personal obligation of all Owners of the Condominium against which it is levied. No Owner may exempt him/herself from liability for payment of Assessments.

**5.10 DELINQUENT PAYMENT OF ASSESSMENT.** An Assessment becomes delinquent if payment is not received by the Association within fifteen (15) days after its due date. The Association may impose a late charge of ten percent (10%) or \$10.00, whichever is greater, on delinquent payments as compensation for additional administrative costs. A late charge may be imposed on each delinquent payment, but may not be imposed more than once on any single delinquent payment. The Association may also charge interest on delinquent payments at the rate of twelve percent (12%) per annum beginning thirty (30) days after the due date and continuing until the date payment is received. Payment toward a delinquent Assessment shall be credited first to satisfying the Assessment, next to costs of collection, next to late charges, and finally to accrued interest. If a Regular Annual Assessment installment is not paid within fifteen (15) days of the due date more than three (3) times during a fiscal year, the Association may declare the entire remaining unpaid balance of the Regular Annual Assessment for that

fiscal year immediately due and payable in full by written notice to the Owner.

**5.11 ENFORCEMENT ON DEFAULT.** Each and every financial obligation of an Owner arising under the Governing Documents is a personal debt of the Owner as of the date it is due. The Association may pursue a legal action against an Owner for a delinquent financial obligation without recording a lien to secure the obligation.

**5.12 ASSESSMENTS LIENS.** A delinquent Assessment, regardless of type, plus any late charges, interest, costs of collection or related charges may be made a lien on the delinquent Owner's Condominium by recording a notice of delinquent Assessment with the County Recorder. The notice of delinquent Assessment shall contain the information and meet the other requirements of Civil Code §1367(a) and (b). Such a lien may be enforced in any manner permitted by law. A lien for delinquent Regular Assessments and Special Assessments, and a lien for delinquent Personal Reimbursement Assessments levied to reimburse the Association for costs associated with the repair of damage for which an Owner, Occupant or invitee is responsible, may be enforced by nonjudicial foreclosure conducted in accordance with the provisions of Civil Code §§2924, 2924(b) and 2924(c). Upon payment of the sums specified in the notice, the Association shall promptly record a notice acknowledging satisfaction and releasing the lien. The lien shall not be affected by the sale or transfer (other than through foreclosure) of the affected Condominium.

**5.13 ALTERNATIVE RESOLUTION OF ASSESSMENT DISPUTES.** Notwithstanding anything to the contrary in Section 12.8, an Owner may use the alternative dispute resolution process described in that Section to resolve a dispute regarding Assessments provided such Owner has not used alternative dispute resolution to resolve an Assessment dispute more than two (2) times in a single calendar year or more than three (3) times in five (5) calendar years. An Owner wishing to use alternative dispute resolution to resolve an Assessment dispute must (i) first pay to the Association the full amount of the disputed Assessment plus all interest, late charges and lien expenses, plus up to four hundred twenty five dollars (\$425) in attorney's fees, and (ii) notify the Association in writing by certified mail that the amount is paid under protest within thirty (30) days after a notice of delinquent assessment is recorded. If an Owner follows the procedures set forth in this Section, the Association shall notify the Owner that he/she may resolve the dispute as described in Section 12.8, through a civil action, or through any other dispute resolution procedure available through the Association. Interest may be awarded to an Owner for Assessments paid under protest and later found not to be due.

**5.14 NO FORECLOSURE BASED ON PENALTIES.** A penalty, fine, charge or other financial obligation, including costs and expenses of collection, levied by the Association against an Owner as a Personal Reimbursement Assessment for a violation of the Governing Documents may be made a lien against the Condominium of such Owner, but may not be enforced by nonjudicial foreclosure under Civil Code §§2924, 2924(b) and 2924(c) except as allowed by law. The obligation may be enforced by judicial foreclosure or judicial execution once the obligation is reduced to judgment. The limitations of this Section do not apply to unpaid Regular Annual or Special Assessments, late charges on delinquent Regular Annual or Special Assessments, interest on delinquent Regular Annual or Special Assessments, and costs and expenses incurred collecting delinquent Regular Annual or Special Assessments.

**5.15 STATUS CERTIFICATE.** Upon written request of an Owner, the Association shall provide an Owner with a written statement, signed by an authorized representative of the Association, stating the amount of all unpaid Assessments, fines, penalties, charges and other financial obligations owed to the Association by the Owner as of the date of the statement. The statement shall be conclusively presumed accurate as of its date in favor of any good faith purchaser of a Condominium who relies on it. The Association may charge a reasonable fee for

the statement which shall not exceed the actual administrative cost.

**5.16 WAIVER OF STATUTORY PRIORITY.** Each Owner waives the benefit of statutory debtor protection, including homestead and exemption rights, to the full extent permitted by California and Federal law with respect to enforcement of Assessment liens.

## **ARTICLE 6. MAINTENANCE AND ALTERATION**

### **6.1 OWNER MAINTENANCE RESPONSIBILITY.**

**A.** Each Owner shall maintain all elements of his/her Unit, and the following elements of his/her assigned Restricted Common Area:

- (1) With regard to interior Restricted Common Area, any finished wall, floor or ceiling surfaces which serve only his/her assigned area;
- (2) With regard to windows, the glass, screens, and interior surfaces of the window frame;
- (3) With regard to exterior doors, the door, door hardware, screen door, and interior surfaces of the door frame, but not the paint on the exterior of the door; and
- (4) With regard to patios and decks, all deck drains and landscaping located within the boundaries.

Each Owner shall maintain the elements of the Property for which he/she is responsible in a condition which does not impair the value or desirability of other Units.

**B.** Each Owner is responsible for maintenance necessitated by the misconduct of his/her guests and invitees, of the Occupants of his/her Unit and of the guests and invitees of such Occupants. Each Owner is also responsible for maintenance necessitated by a consequence of the malfunction, misuse or alteration of any device or system within his/her Unit or within those portions of Restricted Common Area for which he/she is responsible. The provisions of this Subsection B are intended to supersede any conflicting provisions of other Subsections of Section 6.1.

**C.** If an Owner fails to satisfy his/her maintenance requirements, the Association may do so and assess any associated expense as a Personal Reimbursement Assessment.

### **6.2 ASSOCIATION MAINTENANCE RESPONSIBILITY .**

**A.** The Association shall maintain all Common Area, including Restricted Common Area, in good condition and repair. This maintenance requirement shall not apply to items which are the responsibility of a specific Owner under this First

Restated Declaration.

- B.** The Association is responsible for maintenance necessitated by the conduct and behavior of its invitees, and for maintenance necessitated by a consequence of the malfunction, misuse or alteration of any device or system for which the Association is responsible. The provisions of this Subsection B are intended to supersede any conflicting provisions of Section 6.1.
  
- C.** In the event that this First Restated Declaration requires that the Association undertake maintenance associated with, or repair of damage caused by, wood-destroying pests and organisms, the Association shall follow the procedure described in Civil Code §1364. The Association may require Occupants to vacate a Unit in order to allow attempted eradication of wood-destroying pests or organisms, but must first give written notice not less than fifteen (15) days nor more than thirty (30) days before the date to vacate. The notice shall state the reason vacation is necessary, the date and time the work will begin, the date and time the work is expected to end, and that the Occupants will be responsible for their own accommodations and the care, storage and protection of their personal property during the work. Notice shall be deemed complete when (i) the notice is personally delivered to one of the Occupants or sent by first class mail to the address of the Unit, and (ii) if the Unit is not Owner-occupied, a copy of the notice is sent by first class mail to at least one Owner of the Unit at the Owner's address shown in the Association records.

**6.3 ALTERATION OF UNITS.** Without Association approval, an Owner may make alterations or improvements within the boundaries of his/her Unit that do not impair the structural integrity or mechanical systems, lessen the support of any part of the Property, or impair the value or desirability of other Units. All other improvements shall require Association approval. Regardless of whether Association approval is required, prior to making any alteration, an Owner shall (i) obtain all required governmental permits and approvals and (ii) in cases where a building permit is required, provide a copy of the building permit application to the Association at least ten (10) calendar days before commencing work.

**6.4 ALTERATION OF COMMON AREA.** Common Area, including Restricted Common Area, may be physically "altered" only with Association approval. For the purposes of this Section, the term "altered" shall mean (i) any substantial change in the appearance of exterior Common Areas such as a change in color, material, design, style, or plant types, (ii) placement of anything in or on the exterior of the Property, or (iii) installation of a screen, cover, awning, hot tub, spa, or fence in a balcony, deck, patio, carport or other exterior area. Repair or replacement of building elements with items of similar color, material, and design shall not be deemed an "alteration." "For Sale" or "For Rent" signs that do not exceed three (3) square feet in size may be displayed on portions of the Common Area designated by the Association.

**6.5 WINDOW COVERINGS.** Unless otherwise approved by the Association, all window coverings visible from the street or Common Area shall be of a material and type commonly used for window coverings, and shall be white or off-white in color on the portion visible from the street or Common Area.

**6.6 ASSOCIATION APPROVAL PROCEDURES.**

- A. Architectural Rules.** The Association may enact rules (the "Architectural Rules") to govern alteration approvals. The Architectural Rules shall be

consistent with the Governing Documents.

**B. Architectural Committee.** The Board may establish a committee (the "Architectural Committee") to enact Architectural Rules and govern alteration approvals. The Architectural Committee shall consist of three (3) Owners appointed by the Board for a one (1) year term. Whenever an Architectural Committee exists, it shall act on behalf of the Association with regard to Architectural Rules and alteration approvals. Any decision of an Architectural Committee may be appealed to the Board within ten (10) days of the decision. During any period when there is no Architectural Committee, the Board shall act on behalf of the Association with regard to Architectural Rules and alteration approvals.

**C. Application For Alteration Approval.** Owners wishing to make alterations requiring Association approval shall submit "Plans and Specifications" to the Association. "Plans and Specifications," as used in this Article, shall include the following:

- (1) A description of the proposed alteration, including, as appropriate, its shape, height, width, elevation, materials, color, location and such further information as may be necessary to allow the Association to evaluate it fully;
- (2) Upon request of the Association, a certificate by an architect or engineer licensed by the State of California stating that the alteration (i) will not impair the structural integrity of any part of the Property, and (ii) will not interfere with any Utility; and
- (3) Upon request of the Association, a set of construction drawings prepared by an architect and/or engineer licensed by the State of California.

The Association may require as much detail in the Plans and Specifications as it deems appropriate, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and samples of exterior material and colors. The Association may postpone review of any application until receipt of all required information and materials. Upon submittal of all required information and documentation, the Association shall give the Owner a written, dated receipt. The date of the receipt shall be the commencement date for computing the time within which the Association must approve or disapprove the application. The Association may charge a reasonable fee for reviewing an application.

**D. Time Limit For Association Decision.** Within forty-five (45) days after receipt of all materials required or requested by the Association, it shall notify the applicant in writing of its decision. If the Association fails to notify the applicant in writing of its decision within this time frame, the application shall be deemed denied.

**E. Standards For Association Decision.** The Association has sole and complete discretion to approve or disapprove an alteration requiring approval. The Association shall approve an alteration only if it makes an affirmative finding that the alteration (i) will not impair the structural integrity of any part of the Property, (ii) will not interfere with any Utility, (iii) is consistent with the

Condominium Plan and the Governing Documents, (iv) will not detract from the appearance, harmony, attractiveness and enjoyability of the Property, and (v) will not impose an unreasonable maintenance burden on the Association.

**F. Proceeding With Approved Work.** Upon approval of an alteration, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Subsection, the approval given shall be deemed revoked unless the Association extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Association finds that there has been no change in the circumstances under which the original approval was granted.

**6.7 NO WAIVER OF FUTURE APPROVALS.** The approval or disapproval of an alteration shall not be deemed a waiver of the Association's subsequent right to approve or disapprove a similar alteration or any other matter.

**6.8 INSPECTION AND NONCOMPLIANCE.** Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. The Board, following Reasonable Entry Notice, may inspect any work performed on the Property to ensure it is done in accordance with this Article, regardless of whether approval was required or granted, and regardless of whether notice of completion was required or given. If, as a result of an inspection, the Board finds a violation of this Article, it may notify the Owner in writing of the violation. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy it. If the Owner fails to remedy the non-compliance in accordance with the provisions of the notice, then, after the expiration of thirty (30) days from the date of the notice, the Board shall provide notice of a hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall require the Owner to remedy it within a period of not more than forty-five (45) days from the date of the Board's ruling. At any time within such period, or within any extension of such period as the Board, in its discretion, may grant, the Board may choose not to wait for the Owner to act, and instead the Board may act to remedy the non-compliance, and assess any associated costs against the Owner as a Personal Reimbursement Assessment. The Association may also cause a notice of nonresponsibility for mechanics' liens to be recorded and posted as specified in Civil Code §3094. Any officer, director, or Architectural Committee member shall promptly notify the Association upon learning of any violation of this Article.

## **ARTICLE 7. USE RESTRICTIONS**

**7.1 CONDOMINIUM USE.** The Property shall be used solely for residential purposes, except that an Occupant may engage in a professional or administrative occupation within the Property if (i) it is merely incidental to the use of the Unit as a residence, (ii) it conforms to all applicable Governmental Regulations, and (iii) there is no external evidence of business activity.

**7.2 DELEGATION OF RIGHTS.** Any Occupant of an Owner's Unit shall be entitled to all of that Owner's rights to use and enjoy the Property. During any period when a tenant is in possession of an Owner's Unit, the Owner shall not be entitled to use and enjoy the recreational facilities of the Property.

**7.3 PARKING AND USE OF MOTOR VEHICLES.** No recreation vehicle (including camper unit, motor home, trailer, bus or boat), truck (other than standard pickup truck, light van or SUV), commercial vehicle (other than a vehicle used for business and personal and only provided any commercial markings or signs are unobtrusive and inoffensive in the opinion of the Board), vehicle without current registration, or inoperable vehicle shall be parked or stored anywhere on the Property unless such parking or storage is deemed temporary by the Board. No noisy or smoky vehicles, and no off-road or unlicensed motor vehicles, shall be operated on the Property. No parking area shall be used for living, recreational or business purposes. Repair of a motor vehicle is not permitted anywhere on the Property. No vehicle may remain in the area of unassigned parking spaces for more than twelve (12) hours unless the Board makes a specific exception to this rule. Each Owner shall keep his/her designated parking spaces neat and clean and shall remove any oil, grease or other waste. Each Owner and Occupant shall indemnify, defend and hold harmless the Association and its Board, officers, manager, employees, and other Owners and Occupants against any and all loss, cost or liability including attorneys fees, arising out of claims related to his/her ownership, maintenance or use of motor vehicles on the Property.

**7.4 REMOVAL OF MOTOR VEHICLES.** The Association may remove any motor vehicle wrongfully parked on the Property at the owner's expense. Following the removal, the Association shall notify (i) the local traffic law enforcement agency and (ii) if his/her identity is known by the Association, the owner. The notice shall include a description of the vehicle, the license number and the address from where the vehicle is removed. If the identity of the owner is not known by the Association and the vehicle has not been returned to the owner within one hundred and twenty (120) hours after removal, the Association shall promptly notify the California Department of Justice and file a copy of the notice with the proprietor of the 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 where the vehicle is stored. The Association shall not be liable for any damages or loss suffered by the owner as a consequence of removal unless such damage or loss resulted from negligence of the Association.

**7.5 NUISANCE.** No person shall use any part of the Property in a way that unreasonably interferes with the quiet enjoyment of an Occupant, or which is noxious, illegal, seriously annoying or offensive to a person of reasonable and normal sensitivity. The Association shall have wide discretion to determine what constitutes a nuisance, and the duty to order those responsible to cease or abate such nuisance immediately. There shall be no exterior fires except in barbecue receptacles designed for that purpose. No activity may be carried on that adversely affects insurance coverage or rates on the Property. No Owner shall do or permit anything to be done which is in violation of a Governmental Regulation or which will or may decrease the attractiveness, desirability or value of another Unit or the Property as a whole.

**7.6 ANIMALS.** An Occupant may keep domestic dogs, cats, fish, and birds provided he/she (i) does not keep his/her animal(s) for commercial purposes, (ii) maintains reasonable control over his/her animals at all times, (iii) keeps his/her dog(s) on a leash held by a person capable of controlling it when outside a Unit, (iv) immediately cleans up after his/her animal(s), (v) thereby becomes liable to the Association and all persons for any damage caused by his/her animal(s), and (vi) thereby agrees to indemnify, defend and hold harmless the Association and its Board, officers, manager, employees, and other Owners and Occupants against any and all loss, cost or liability including attorneys fees, arising out of claims related to his/her pet. The Occupants of a single Unit shall collectively keep no more than one (1) four-legged animal. The Association can prohibit the keeping of any animal that it determines to be a nuisance to any person of reasonable and normal sensitivity, or whose barking disturbs other Owners. Any Owner may cause an unleashed dog found in the Common Area to be removed to a pound or

animal shelter under the jurisdiction of Santa Clara County by calling the appropriate authorities.

**7.7 GARBAGE DISPOSAL.** Occupants shall keep (i) all waste in proper containers, (ii) all waste containers in portions of the Common Area designated by the Association, and (iii) all waste containers and adjacent portions of Common Area in a neat, clean and sanitary condition.

**7.8 RIGHT TO LEASE.** An Owner or Occupant may lease or sublease his/her Condominium provided that (i) the lease or sublease is in writing, (ii) the lease or sublease is for a minimum term of thirty (30) days, (iii) the lease or sublease is made subject to the Governing Documents, (iv) the lessee or sublessee agrees to abide by all provisions of the Governing Documents, and (v) an executed copy of the lease or sublease is delivered to the Association prior to the lessee taking possession of the Condominium. An Owner shall be responsible for ensuring the compliance with the Governing Documents by everyone residing in the Owner's Unit. Each Owner hereby grants the Association an irrevocable power of attorney to commence and pursue injunctive relief or an unlawful detainer action against a lessee or sublessee who is in violation of the Governing Documents.

**7.9 CLOTHES LINE.** There shall be no exterior clothes lines or outside laundering or drying of clothes.

**7.10 STORAGE.** Within Restricted Common Area, Occupants may not store any hazardous material, or any material which creates a fire hazard or impairs the value or desirability of any Condominium. Occupants may not store any item in other Common Area without prior Association approval.

**7.11 GARAGE SALES.** There shall be no rummage sales, garage sales or flea markets of any kind without Association approval.

## **ARTICLE 8. INSURANCE**

**8.1 GENERAL LIABILITY INSURANCE.** The Association shall maintain an insurance policy insuring the Association, its directors, officers and the Owners against public liability incident to ownership and use of the Property. The limits of coverage shall not be less than two million dollars (\$2,000,000) per incident of injury, death and property damage. The policy shall contain a severability of interest endorsement precluding the insurer from denying coverage to a named insured because his/her act or omission created liability in favor of another insured. The policy shall also contain a contractual liability endorsement.

**8.2 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.** The Association shall maintain an insurance policy insuring the Association, its directors and officers against liability arising out of acts or omissions in their capacity as agents of the Association. The limits of coverage shall not be less than two million dollars (\$2,000,000) per incident. The policy shall provide prior acts coverage.

**8.3 FIRE AND CASUALTY INSURANCE.** The Association shall maintain a policy of fire and casualty insurance providing multi-peril coverage for all portions of the Property which the Association is obligated to maintain and all Association property. The limits of coverage

shall not be less than full current replacement cost including required building code upgrades. The policy shall contain an agreed amount endorsement.

**8.4 OTHER INSURANCE.** The Association may acquire such additional insurance, coverages or limits as it deems advisable. The Association may maintain a fidelity bond or equivalent insurance on all individuals handling Association funds. If the Association has employees, it shall maintain workers' compensation insurance as required by law.

**8.5 GENERAL POLICY PROVISIONS.** Each Association insurance policy shall (i) name the Association as trustee for policy benefits payable to the Owners, (ii) provide a waiver of subrogation rights against the Association, its directors, officers and Owners, (iii) state that coverage be primary and not affected by any other insurance held by an Owner, and (iv) require that at least thirty (30) days prior written notice be given to the Association by the insurer before cancellation.

**8.6 INSURER RATING.** The Association's insurance shall be written by an insurance company qualified to do business in California with a rating of at least an "A" by Best's Insurance Reports or equivalent.

**8.7 REVIEW OF INSURANCE POLICIES.** The Board shall review all Association insurance policies at least once a year to ensure that they are adequate to meet the current needs of the Association.

**8.8 NOTICE OF CHANGE IN INSURANCE COVERAGE.** The Association shall notify the Owners by first-class mail as soon as reasonably practical if any of its insurance policies: (i) lapses or is canceled and is not immediately renewed, restored or replaced; (ii) will undergo significant change such as a reduction in coverage or limits, or an increase in the deductible; or (iii) is subject to a notice of nonrenewal and replacement coverage will not be in effect at the time the existing coverage will lapse.

**8.9 INABILITY TO OBTAIN INSURANCE.** If the insurance required by the Governing Documents is difficult, impractical or unduly expensive to obtain, the Association shall obtain insurance as nearly equivalent to the required insurance as is reasonably available.

**8.10 OWNER'S INSURANCE.** An Owner is responsible for obtaining and maintaining insurance covering his/her personal liability, separate interest and personal property.

**8.11 CASUALTY INSURANCE DEDUCTIBLES AND PROCEEDS.** The deductible payable in the event of a loss shall be paid by the person(s) or entity responsible for maintenance at the point of origin of the physical damage. The person(s) or entity who pays the deductible shall have the right to recover such amount from any party responsible for the loss. Proceeds from Association insurance received as a consequence of damage or loss to a portion of the Property which an Owner must maintain shall be distributed to that Owner. If the proceeds are insufficient to complete the work, the Owner shall pay the additional amounts.

## **ARTICLE 9. CATASTROPHIC DAMAGE AND CONDEMNATION**

**9.1 CATASTROPHIC DAMAGE.** As used in this Section, "Catastrophic Damage" means sudden and unexpected physical damage to portions of the Property which the

Association is obligated to maintain for which the repair cost will exceed fifty percent (50%) of the full replacement cost of all portions of the Property which the Association is obligated to maintain.

- A. Determining Extent Of Damage.** Immediately after the occurrence of Catastrophic Damage, the Association shall obtain two or more written bids from separate licensed contractors to restore the damaged elements to substantially the same condition as existed before the damage occurred. Repair bids shall include at a minimum a detailed scope of work, fixed or not-to-exceed contract price, completion date and provision for adequate insurance coverage by the contractor. Payment and performance bonds shall be required in repair contracts exceeding one hundred thousand dollars (\$100,000).
- B. Determining Availability Of Repair Funds.** After obtaining repair bids, the Association shall promptly determine the amount of funds available for the repair from insurance, reserves, loans, and any other source. In making this determination, the Association shall consider as available any insurance proceeds payable to any Owner for repair or replacement of any of the damaged elements.
- C. Repair Funds 75% Or More Sufficient.** If the available funds are sufficient to cover seventy-five percent (75%) or more of the repair cost, the Association shall restore the damaged elements to substantially the same condition as existed before the damage occurred, and levy the difference between the available funds and the total repair cost as a Special Assessment. Any Owner who receives insurance proceeds for repair or replacement of any of the damaged elements shall provide such proceeds to the Association in addition to his/her portion of the Special Assessment.
- D. Repair Funds Less Than 75% Sufficient.** If the available funds are insufficient to cover seventy-five percent (75%) of the repair cost, the Association shall hold a Special Owner Meeting to decide whether to repair.
- (1) If a majority of Units vote to repair, the Association shall restore the damaged elements to substantially the same condition as existed before the damage occurred and raise the difference between the available funds and the total repair cost by levying a Special Assessment, borrowing funds, or both. Any Owner who receives insurance proceeds for repair or replacement of any of the damaged elements shall provide such proceeds to the Association in addition to his/her portion of the Special Assessment.
  - (2) If a majority of Units vote not to repair, or the Association reaches a deadlock on the issue, it shall sell the entire Property in its then existing condition on the best available terms. Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any negotiations or agreements related to sale or other liquidation following Catastrophic Damage. The sale proceeds together with any insurance proceeds, net of any expenses associated with necessary stabilization of the Property and fees associated with disposition of the Property, shall then be distributed as provided in Section 9.3 of this First Restated Declaration. The Association shall then be dissolved and the

entire common interest development terminated as provided by law. If the Association fails to sell the Property within a reasonable period of time, it may bring an action for judicial partition.

Failure of the Association or the Owners to hold a special meeting to consider repairing Catastrophic Damage within twelve (12) months of its occurrence, and/or failure of the Association to obtain a loan or approval of a Special Assessment required for repair, shall be deemed a decision of the Owners not to repair.

- E. Repair Work.** All individuals or entities performing repairs for the Association shall (i) hold all licenses legally required for such repairs and (ii) enter into a written contract with the Association which satisfies all of the requirements for repair bids specified in Subsection A. The Association shall ensure that repairs are diligently pursued to completion in accordance with best construction practices prevailing in the locale at the time the work is done.
- F. Emergency Repair.** The Association may make repairs or take any other necessary action in an Emergency without first complying with the provisions of this Article.
- G. Certification Of Intention.** If the Association decides, by affirmative act or failure to act, to sell the Property rather than repair Catastrophic Damage, it shall promptly notify all Owners in writing of the decision and record a certificate reciting that fact with the County Recorder.
- H. Revision Of Documents.** If the Association decides, by affirmative act or failure to act, not to repair Catastrophic Damage, the Association shall have the power and authority to execute and record, on behalf of itself and the individual Owners, all necessary documents to show the altered status of the Property, including but not limited to a revised Condominium Plan.

**9.2 CONDEMNATION.** Each Owner hereby grants the Association an irrevocable power of attorney to represent the Owner in any condemnation or eminent domain negotiation or proceeding, whether or not a civil action has been started. The proceeds from a taking of two or more Condominiums or of the Common Area by eminent domain shall be distributed as provided in Section 9.3 of this First Restated Declaration.

**9.3 DISTRIBUTIONS.** All net proceeds from insurance, liquidation, or condemnation relating to two or more Condominiums or the Common Area shall be paid to the Association for the benefit of the Owners and their mortgagees. To the extent proceeds from insurance or condemnation have been allocated among affected Units and Common Area by the paying entity, the Association shall distribute such funds in accordance with that allocation. Otherwise, the Association shall distribute these funds to the affected Owners based upon the relative value of the affected Owners' Condominiums. Relative value shall be determined through an appraisal process as follows:

- A.** The Association shall retain three (3) appraisers meeting the following requirements: (i) having at least two (2) years experience appraising real estate similar to the Property in the area where the Property is located, (ii) holding a valid real estate sales, brokerage or appraisal license, (iii) having no prior business or personal relationship with any Owner, and (iv) agreeing in writing to

complete his/her appraisal within fourteen (14) calendar days of retention.

- B.** The Association shall instruct each appraiser to determine the fair market value of each Condominium involved in the relative valuation. The appraisers shall base their valuations on the physical conditions which existed on the date immediately preceding the destruction or other event triggering the need for valuation.
- C.** Upon receiving the valuations of all appraisers, the Association shall disregard the lowest and highest appraisal for each Condominium. The Association shall then use the remaining appraisal for each Condominium to determine the relative values.

If any Owner owes money to the Association at the date of the disbursement, the amount owed shall be subtracted from the amount to be disbursed to that Owner.

## **ARTICLE 10. NOTICE OF TRANSFER**

**10.1 NOTICE OF TRANSFER.** An Owner who transfers any ownership interest in a Condominium, whether by sale, lease, gift, exchange or otherwise, shall promptly notify the Association in writing of the name and address of the transferee, the type of transfer, the date of transfer and any other information about the transfer that the Association may reasonably request.

## **ARTICLE 11. MORTGAGE PROTECTION**

**11.1 DEFINITION OF ELIGIBLE MORTGAGEE.** An "Eligible Mortgagee" is the holder of a Mortgage given to secure payment of a portion of the purchase price of a Condominium and which has requested designation as an Eligible Mortgagee in writing by registered mail, return receipt requested, within ten (10) days of the creation of the mortgage or deed of trust. In order to maintain eligibility, an Eligible Mortgagee must renew its request for such designation in the same manner each year within ten (10) days of the anniversary date of its initial request. The original request and each renewal request shall include the debtor's name, loan number, current holder of the promissory note or other obligation, amount of the unpaid principal, and address and assessor's parcel number of the encumbered parcel. Strict compliance with this paragraph is required.

**11.2 OWNER'S RIGHT TO ENCUMBER.** An Owner may encumber his/her Condominium with a mortgage or lien. An Owner may not encumber the Common Area other than his/her Percentage Interest.

**11.3 NOTICE TO ELIGIBLE MORTGAGEE.** An Eligible Mortgagee shall be entitled to written notice of the following:

- A.** The occurrence of loss, casualty, condemnation or eminent domain which decreases the value of its encumbered Condominium by more than fifty percent (50%) of its fair market value immediately prior to the occurrence;

- B.** Any 60-day delinquency in the payment of Assessments by, or Association commencement of judicial or nonjudicial foreclosure proceedings to enforce payment of delinquent obligations owed under the Governing Documents against, the Owner of its encumbered Condominium;
- C.** Any proposed action requiring the consent of Eligible Mortgagees; and
- D.** Any lapse or cancellation of any Association insurance policy.

Failure of an Eligible Mortgagee to receive the notice required by this Section shall not be construed to benefit an Owner or to impede the Association in enforcing the Governing Documents.

**11.4 ACTS REQUIRING CONSENT OF ELIGIBLE MORTGAGEE.** Absent Catastrophic Damage, condemnation, or the prior written approval of a majority of the Eligible Mortgagees, the actions described in Section 3.25 shall not be effective against any Mortgagee which acquired its Mortgage prior to recordation of a document describing the action. Failure to obtain the prior written approval of a majority of the Eligible Mortgagees shall not be construed to (i) invalidate the effect of any action on an Owner who was not previously a Mortgagee, (ii) invalidate the effect of any action on a Mortgagee which acquired its Mortgage after recordation of a document describing the action, or (iii) impede the Association in enforcing the Governing Documents.

**11.5 PRIORITY OF SECURITY INTERESTS IN CONDOMINIUM.** An Eligible Mortgagee or lien holder in a Condominium shall have the priority and rights established by California law.

**11.6 ACQUISITION OF TITLE BY FORECLOSURE.** Each Owner who acquires title by foreclosure shall not be personally liable for obligations which accrued prior to acquisition against the Condominium or its prior Owner. An Owner who acquires by foreclosure shall be personally liable for all obligations associated with his/her Condominium which accrue after acquisition. Nothing in this paragraph shall affect the validity of a perfected security interest in a Condominium.

**11.7 PROHIBITION ON FORECLOSURE OF COMMON AREA.** No holder of any type of lien or encumbrance may foreclose on an Owner's interest in the Common Area without also foreclosing on the remainder of the Owner's Condominium.

**11.8 RIGHTS TO INFORMATION BY MORTGAGEES.** An Eligible Mortgagee is entitled to obtain the same information as an Owner from the Association upon written request and payment of required fees.

**11.9 FORMER OWNER IN POSSESSION.** A former Owner who loses title by foreclosure but remains in possession shall be bound by the Governing Documents as long as he/she remains in possession, but shall have no obligation to pay Assessments accruing after the date title is transferred.

## **ARTICLE 12. GENERAL PROVISIONS OF DECLARATION**

**12.1 AMENDMENT OF DECLARATION.** Provisions of this First Restated Declaration requiring approval of more than a majority of Units for action may be amended only with the approval of the number of Units required for action under the provision. Provisions requiring approval of Eligible Mortgagees for action may be amended only with the approval of the percentage of Eligible Mortgagees required for action under the provision. All other provisions may be amended with the approval of a majority of Units.

**12.2 CERTIFICATION OF APPROVAL AND RECORDATION.** An amendment of this First Restated Declaration shall become effective when an authorized officer of the Association has executed and recorded with the County Recorder both (i) the amendment and (ii) a notarized certificate stating that the required number of Units have approved the amendment. The Association shall distribute a copy of the amendment to each Owner as soon as it becomes effective.

**12.3 NOTICE.** A notice or notification permitted or required by the Governing Documents shall be in writing and deemed received by the person to whom it is given upon either (i) personal delivery or (ii) expiration of forty-eight (48) hours after deposit in the United States mail, postage prepaid and addressed to the current or, if unavailable, to the last known address of the person to be notified. It does not matter whether a notice is sent by first-class, registered or certified mail. Notice to the Association shall be given to its President. When Co-Owners own a Unit, notice to any of them shall be deemed notice to all of them. When several Occupants share a Unit, notice to any of them shall be deemed notice to all of them.

**12.4 INTERPRETATION.** Any uncertainty or ambiguity in the Governing Documents shall be resolved by reference to the following rules of interpretation: (i) the provisions of the Governing Documents shall be liberally interpreted to facilitate the operation of a common interest development and liberally interpreted to preserve and protect the general plan established for mutual and common benefit of all Owners, and (ii) a more specific provision shall prevail over a more general one. In the event of an inconsistency between this First Restated Declaration and the Condominium Plan, the Condominium Plan shall control. In the event of an inconsistency between this First Restated Declaration and the First Restated Bylaws, this First Restated Declaration shall control. Both this First Restated Declaration and the First Restated Bylaws shall control over an inconsistent provision in the Rules.

**12.5 SEVERABILITY.** Each provision of the Governing Documents is independent and severable, and may be enforced even though another provision may be unenforceable.

**12.6 MEDIATION.** Mediation is a voluntary informal attempt to resolve a dispute with the help of a neutral individual who has no decision-making authority. The Association encourages mediation and shall participate in mediation in an effort to resolve disputes related to the Governing Documents, unless the Association determines that immediate action is necessary or that mediation under the circumstances would not be in its best interest. The Association shall establish appropriate procedures for commencing mediation. Mediation may occur before, during, or after arbitration or litigation. Unless otherwise agreed, mediation costs shall be shared equally by the participants.

**12.7 ARBITRATION.** Arbitration is a voluntary or mandatory method of resolving a dispute by delegating decision making authority to a neutral individual or panel. Except as provided by Sections 12.8 and 12.9, any dispute relating to the Governing Documents shall be resolved through mandatory arbitration by the American Arbitration Association or another

private arbitration service or individual acceptable to all parties. Any party affected by a dispute may initiate arbitration by written demand. All parties shall pursue arbitration to a conclusion as quickly as possible and conclude every case within six (6) months from the date of the initial written demand for arbitration. Arbitrators shall have discretion to allow the parties reasonable and necessary discovery in accordance with Code of Civil Procedure §1283.05, but shall exercise that discretion mindful of the need to promptly and inexpensively resolve the dispute. If a party subject to the Governing Documents refuses to proceed with or unduly delays the arbitration process, any other party may petition a court for an order compelling arbitration or other related act, and shall recover all related expenses, including attorney fees, unless the court finds that the party against whom the petition is filed acted with substantial justification or that other circumstances make the recovery of such expenses unjust. An arbitration award may be entered as a court judgment and enforced accordingly. The arbitration award shall be binding (i) unless the award declares a provision of this First Restated Declaration unenforceable or (ii) unless the award is in excess of ten thousand dollars (\$10,000), in which cases any party may obtain a trial *de novo* in court of appropriate jurisdiction provided he/she files a civil complaint within sixty (60) days of the entry of a final judgment on the arbitration award. The pendency of arbitration shall toll all applicable statutes of limitation.

**12.8 DECLARATORY OR INJUNCTIVE RELIEF.** Actions seeking only declaratory or injunctive relief, and actions seeking these remedies along with monetary relief (other than collection of Assessments) of five thousand dollars (\$5,000) or less, shall be exempt from the requirements of the preceding Section, but the following provisions shall apply.

- A. Any party may serve on any other party a "Request for Resolution" which includes (i) a brief description of the dispute, (ii) a request for mediation or arbitration, and (iii) a statement that the party receiving the Request must respond within thirty (30) days or the Request will be deemed rejected. If the Request is accepted within the thirty (30) day period, the mediation or arbitration shall be completed within ninety (90) days of receipt of the acceptance by the party who first served the Request unless both parties agree to an extension.
- B. Any party filing a lawsuit must also file a certificate stating that (i) mediation or arbitration has been completed in compliance with the preceding Subsection, (ii) another party rejected the Request for Resolution, (iii) the time limit for bringing the action would have lapsed within one hundred twenty (120) days, or (iv) preliminary or temporary injunctive relief is necessary. Failure to file this certificate could result in dismissal of the case.

**12.9 DISPUTES EXCLUDED FROM ARBITRATION.** The following types of lawsuits shall be exempt from the requirements of Section 12.7:

- A. Unlawful detainer;
- B. Enforcement of an obligation to pay Regular and Special Assessments under the Governing Documents, including a judicial or nonjudicial foreclosure to enforce an assessment lien;
- C. Partition pursuant to Civil Code §1359;
- D. Small Claims Act (Code of Civil Procedure §§116.110-116.950) proceedings;

- E.** Condemnation or eminent domain;
- F.** Bodily injury or wrongful death;
- G.** Latent or patent defects in Association property;
- H.** Probate or domestic relations proceedings; and
- I.** Recordation of a notice of pending action, or an order of attachment, receivership, injunction or other provisional remedy which may provide interim protection during the pendency of an arbitration proceeding.

**12.10 POWER OF ATTORNEY.** Each Owner grants an irrevocable power of attorney to the Association to carry out the provisions of this First Restated Declaration.

**12.11 LIMITATION OF LIABILITY.** A volunteer officer or volunteer director, as defined in Civil Code §1365.7, shall not be personally liable for any loss, damage or injury claimed to be the result of a wrongful act or omission in the scope of his/her duties on behalf of the Association absent gross negligence, intentional misconduct or fraud shown by clear and convincing evidence.

**12.12 OWNER'S ACCOUNTABILITY.** Each Owner is responsible to the Association for the conduct and behavior of Occupants of the Owner's Unit, including but not limited to violations of the Governing Documents.

**12.13 INDEMNIFICATION.** Absent gross negligence, intentional misconduct or fraud, the Association shall indemnify its directors, officers and committee members to the fullest extent permitted by law against all liability and expenses, including reasonable attorney's fees, arising out of a claim based upon a wrongful act or omission in the scope of their duties on behalf of the Association. The Association shall approve or disapprove the indemnity, and may advance expenses, in accordance with Corporations Code §7237.

**12.14 NO PUBLIC RIGHTS.** There shall be no entitlement to public use of, public access to, or other public rights in the Property. The Association reserves the right to prohibit entry on the Property by any person whose presence is not authorized by the Governing Documents.

**12.15 COSTS AND ATTORNEY'S FEES.** The party who prevails in an arbitration, civil action or other proceeding to enforce or interpret the Governing Documents shall be entitled to recover all costs and expenses, including reasonable attorney's fees, but the arbitrator, judge or other decision maker shall have final discretion to allocate such costs and expenses between the parties in a manner that will accomplish substantial justice.

**12.16 TERM OF RESTATED DECLARATION.** This First Restated Declaration shall continue for a term of twenty (20) years from the date it is recorded unless superseded or terminated sooner. The term shall be automatically extended for successive periods of ten (10) years, unless the Association is terminated, and it records with the County Recorder a notice of termination prior to the commencement of the next period.

**12.17 STATUTORY REFERENCES.** References to codes and statutes mean those of the

State of California.

**12.18 CERTIFICATE OF PRESIDENT.** Pursuant to Civil Code §1355(a), I, the undersigned, declare under penalty of perjury that the following facts are true and correct of my own personal knowledge:

- A.** I am the duly elected President of the WOODSIDE COMMONS CONDOMINIUM ASSOCIATION.
- B.** The required percentage of Owners have given their approval to amend the currently effective Declaration of Covenants, Conditions and Restrictions by adopting this First Restated Declaration of Covenants, Conditions and Restrictions.

Executed in San Jose, California on 7/30/01.



\_\_\_\_\_  
President of  
WOODSIDE COMMONS CONDOMINIUM ASSOCIATION

## **WOODSIDE COMMONS CONDOMINIUM ASSOCIATION**

### **FIRST RESTATED BYLAWS**

#### **ARTICLE 13. NAME AND LOCATION**

**13.1 NAME AND LOCATION.** The name of the Association is WOODSIDE COMMONS CONDOMINIUM ASSOCIATION. The principal office of the Association is located at San Jose, California.

#### **ARTICLE 14. DIRECTORS**

**14.1 POWERS AND DUTIES OF DIRECTORS.** The Association shall be managed by a Board of Directors. The Board shall have the power and duty to make decisions on behalf of the Association on all issues except those requiring Unit approval under the First Restated Declaration. The Board may delegate its management duties to a manager.

**14.2 NUMBER AND QUALIFICATION OF DIRECTORS.** There shall be five (5) directors. Directors must be Owners.

**14.3 ELECTION OF DIRECTORS.** Directors shall be elected at Annual Owner Meetings. Mid-term vacancies which have not been filled by the Board may be filled at any Owner Meeting. Regardless of whether a nominating committee has been formed, Owners may make nominations during the Owner Meeting. The Owner receiving the largest number of votes shall be elected. Whenever two (2) or more directors are elected, cumulative voting shall be used subject to the procedural requirements of Corporations Code §7615(b).

**14.4 TERM OF DIRECTORS.** Unless they resign or are removed, directors shall serve until the next Annual Owner Meeting.

**14.5 REMOVAL/RESIGNATION OF DIRECTORS.** Subject to the restrictions of Corporations Code §§7221 and 7222, directors may be removed (i) by Owner vote for any reason, (ii) by Board vote if the director no longer meets the qualifications in effect at the beginning of the director's current term, or (iii) by Board vote if the director fails to attend three (3) consecutive Regular Board Meetings. A director may resign at any time by giving written notice to the Board. In the event of removal, resignation, or death of a director, his/her successor shall be selected by a majority of the remaining directors.

**14.6 REGULAR BOARD MEETINGS.** Regular Board Meetings shall be held at least quarterly at a time and place designated by the Board.

**14.7 SPECIAL BOARD MEETINGS.** Special Board Meetings may be convened by (i) the President or (ii) by any two (2) directors other than the President.

**14.8 NOTICE OF BOARD MEETINGS.** Except in the case of an Emergency, notice of all Board Meetings shall be given to all Owners at least four (4) days prior to the meeting. Notice of a Board meeting may be given to the Owners by posting a written notice in a prominent place within the Common Area, by publication in a newsletter or similar communication, by mail, or by personal delivery. Emergency Board Meetings may be held without notice if a quorum is present and either before or after the meeting each absent director (i) signs a written waiver of notice, (ii) signs a consent to the holding of the meeting, or (iii) approves the minutes of the meeting. All waivers, consents, or approvals shall be filed with the records of the Board and made a part of the minutes.

**14.9 QUORUM AND DECISIONS OF DIRECTORS.** A majority of the directors shall constitute a quorum. Decisions made by a majority of a quorum shall be binding.

**14.10 NONDIRECTOR ATTENDANCE.** Board Meetings, except those held in executive session, shall be open to all Owners. Each such meeting shall include an Owner's forum when Owners shall be permitted a reasonable time to speak. Unless expressly authorized by the Board, Owners other than directors may not participate in any Board discussion or deliberation before or after the Owner's forum.

**14.11 EXECUTIVE SESSIONS.** The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon:

- A.** Personnel matters;
- B.** Litigation in which the Association is or may become involved;
- C.** Matters that relate to the formation of contracts with third parties;
- D.** Any matter relating to discipline of an Owner, provided that any directly affected Owners are entitled to attend the session; and
- E.** Any matter involving attorney-client privilege.

The nature of any business to be considered in executive session shall be announced in open session and noted generally in the minutes. The business conducted in executive session shall be confidential and disclosed only to directors and persons authorized by the Board to have access to such information.

**14.12 COMPENSATION OF DIRECTORS.** Directors shall not be compensated but may be reimbursed for expenses incurred in connection with Association business.

**14.13 COMMITTEES.** The Board may appoint committees as appropriate to carry out its duties.

## **ARTICLE 15. OFFICERS**

**15.1 TITLES AND DUTIES OF OFFICERS.** Officers have the following titles and duties:

- A. President.** The President shall preside at all Board Meetings, supervise the execution of Board orders and resolutions, sign legal instruments as necessary and act as the chief executive officer of the Association.
- B. Secretary.** The Secretary shall record the votes and keep the minutes of all Board and Owner Meetings, keep a current list of the names and addresses of Owners, and perform other duties as the Board may from time to time require.
- D. Chief Financial Officer.** The Chief Financial Officer shall maintain proper books of account and other appropriate financial records in accordance with standard accounting practices, and be responsible for ensuring compliance with the preparation and review of the financial documentation required by Civil Code §§1365 and 1365.5.

**15.2 ELECTION OF OFFICERS.** Officers shall be elected at the first Board Meeting following the Annual Owner Meeting. Mid-term vacancies shall be filled by the Board at its earliest convenience.

**15.3 TERM OF OFFICERS.** Unless they resign or are removed, officers shall serve until the first Board Meeting following the next Annual Owner Meeting.

**15.4 REMOVAL/RESIGNATION OF OFFICERS.** An officer may be removed from office by the Board at any time without cause. An officer may resign at any time by giving written notice to the Board. An officer shall also be deemed to have resigned when he/she ceases to be a director. In the event of removal, death or resignation of an officer, his/her successor shall be selected by a majority of the remaining directors.

**15.5 COMPENSATION OF OFFICERS.** Officers shall not be compensated but may be reimbursed for expenses incurred in connection with Association business.

## **ARTICLE 16. GENERAL PROVISIONS OF BYLAWS**

**16.1 PREPARATION, DISTRIBUTION AND INSPECTION OF MINUTES.** A proposed draft of the minutes, final draft of the minutes, or summary of the minutes of all Board (other than executive session) and Owner Meetings shall be prepared and made available to Owners within thirty (30) days of the meeting. The proposed minutes, final minutes, or summary minutes shall be distributed to any Owner upon request and reimbursement of the reasonable cost of the distribution. At the time of distribution of the *pro forma* operating budget, or at the time of any general mailing to all Owners, the Association shall notify all Owners (i) that they may inspect and copy the minutes, and (ii) how and where such an inspection can occur.

**16.2 OWNER INSPECTION OF RECORDS.** Owners may inspect and copy the Owner list, financial statements, and minutes of Board (other than the executive session), Owner and committee meetings, for any purpose reasonably related to their interests as Owners. To the extent available to the Association, the list of Owners shall contain the names, mailing addresses, telephone numbers and voting rights of each Owner. The Association shall establish rules for the inspection and copying of documents by Owners, and for payment by the inspecting Owner of actual administrative costs of such inspection. No original documents shall be removed from Association custody for copying.

**16.3 DIRECTOR INSPECTION OF RECORDS.** Directors may inspect and copy all books, records and documents of the Association at any time during business hours. The Association shall pay the copying costs of documents reasonably requested by a director to assist him/her in the discharge of his/her duties.

**16.4 AMENDMENT OF BYLAWS.** These First Restated Bylaws may be amended with the approval of a majority of Units.

**16.5 FISCAL YEAR.** The fiscal year of the Association shall be the calendar year, unless a different fiscal year is adopted by the Association.

**16.6 CALIFORNIA CORPORATIONS CODE.** These First Restated Bylaws conform to the provisions of the Corporations Code governing Nonprofit Mutual Benefit Corporations. If a statute upon which these First Restated Bylaws are based is amended, the amendment shall supersede any conflicting provision herein.

**16.7 CERTIFICATE OF SECRETARY.** I certify that I am the duly elected Secretary of Woodside Commons Condominium Association, a California nonprofit mutual benefit corporation, and that these First Restated Bylaws were adopted by the Board on 6/24/01.

Executed at San Jose, California, on 7/29/01.

  
Secretary

## NOTES

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