

CC&Rs (Required Civil Code Sec. 4525)
Americana Condominiums

NOTICE:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.

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Recording Requested By:
Americana Condominium Owners'
Association

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EPSTEN & GRINNELL
555 West Beech St., Ste. 200
San Diego, CA 92101

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For Recorder's Use

SECOND AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AMERICANA CONDOMINIUMS

Recording Requested By:
Americana Condominium Owners'
Association

When Recorded, Return To:
JOHN H. EPSTEN, Esq.
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San Diego, CA 92101

For Recorder's Use

SECOND AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AMERICANA CONDOMINIUMS

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SECOND AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

AMERICANA CONDOMINIUMS

THIS SECOND AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made this _____ day of _____, 19____, by Americana Condominium Owner's Association, Inc., a California non-profit corporation and through its membership ("Declarant").

RECITALS

A. Declarant is a corporation whose Members are the Owners of all the Units within that certain real property in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof ("Property").

B. The Property is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in that certain Declaration of Restrictions recorded May 24, 1973 as File/Page No. 73-141228 and that certain First Amendment to Declaration of Restrictions recorded July 4, 1973 as File/Page No. 73-185475, all of Official Records of the County Recorder of San Diego County.

C. The Property is additionally subject to that certain Condominium Plan, hereinafter defined, which describes a condominium project, as defined in Section 1351(f) of the California Civil Code, and consists of one hundred eighty-four Condominium Units and related Common Areas. Each Unit, shown and described on the Condominium Plan as Units 1 through 164, inclusive, and Units 181 through 200, inclusive, consists of the Living Area, Garage and/or Balcony air spaces described on the Condominium Plan.

D. Declarant now desires to amend and restate the Declaration of Restrictions and replace it in its entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Property shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges contained herein.

E. Declarant hereby declares that all of the Property is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirabili-

ty, and attractiveness of the Property. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Property, and shall be binding on and for the benefit of all of the Property and all parties having or acquiring any right, title, or interest in all or any part of the Property, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Condominium.

ARTICLE 1. - DEFINITIONS

1.1 "Architectural Control Committee" means the Committee appointed by the Board for the purpose of reviewing and approving plans for changes to Units and/or the Common Area and also confirming that the actual construction conforms with such approved plans.

1.2 "Articles" means the Articles of Incorporation of Americana Condominium Owners' Association, Inc., filed in the Office of the Secretary of State of the State of California on May 1, 1973 as File No. 701168, any amendments thereto that are or shall be filed in the Office of the Secretary of State of the State of California.

1.3 "Association" means the Americana Condominium Owners' Association, Inc., a California non-profit mutual benefit corporation created for the purpose of managing a common interest development.

1.4 "Balcony" means those portions of the Project shown on the Condominium Plan and described as the Balcony air spaces. Such Balconies are described as part of the separately owned Unit air space.

1.5 "Board" means the Board of Directors of the Association.

1.6 "Bylaws" means the Bylaws of the Association and any amendments thereto.

1.7 "Common Area" means the entire Property except all Units as defined in this Restated Declaration and as shown on the Condominium Plan.

1.8 "Common Expenses" means those expenses levied in accordance with Article 4 herein, including, but not limited to the following:

- (a) The costs and expenses of the Association for maintenance, management, operation, repair and replacement of the Common Area (including the residential buildings and excepting the interior of a Unit);

- (b) Special Assessments which remain unpaid;
- (c) Special Assessments for capital improvements to the Common Area which may from time to time be authorized;
- (d) Costs for management and administration of the Association, including without limitation, compensation paid by the Association to a manager, accountant(s), attorney(s) or other employees or agents;
- (e) Costs or expenses designated by or in accordance with other provisions of the Governing Documents to be a Common Expense; and
- (f) Any other expense incurred by the Association for the benefit of the Owners in common.

1.9 "Condominium" means an estate in real property consisting of a separate interest in a Unit, Garage and/or Balcony air space, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant in common in the Common Area of the Project and an appurtenant Membership in the Association.

1.10 "Condominium Plan" means that condominium plan recorded May 10, 1973 in the Office of the County Recorder of San Diego County as File/Page No. 73-126230 and any amendments thereto.

1.11 "Declarant" means Americana Condominium Owner's Association, Inc., a California non-profit corporation and its successors and assigns.

1.12 "Garage" means those portions of the Project shown on the Condominium Plan and described as the Garage air spaces. Such Garages are described as part of the separately owned Unit air space.

1.13 "Governing Documents" means this Restated Declaration and any other documents such as the Articles, Bylaws, or Rules and Regulations which govern the operation of the Association.

1.14 "Member" means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.15 "Mortgage" means a mortgage or deed of trust encumbering a Condominium or any other portion of the Project. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.

1.16 "Mortgagee" means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor

or insurer of a mortgage. "Institutional Mortgagee" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Mortgagee" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Project. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

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

1.18 "Owner" means the record holder or holders of record fee title to a Condominium, including Declarant, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation.

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

1.20 "Project" means the common interest development and is a condominium project as described herein and on the Condominium Plan including all improvements thereon.

1.21 "Property" means the real property described in Exhibit "A" attached hereto.

1.22 "Restated Declaration" means this Amended and Restated Declaration of Restrictions and any amendments thereto.

1.23 "Rules and Regulations" means any Rules and Regulations for the Association regulating the use of the Common Area and the Project and any facilities located thereon adopted by the Board pursuant to Section 3.5(b) herein.

1.24 "Unit" means that portion of a Condominium that consists of a separate interest. "Unit" does not include the other elements of the Project. Each Unit shall be a separate freehold estate, as separately shown, numbered, and designated on the Condominium Plan, and shall include any Garage and/or Balcony air space as shown on the Condominium Plan. Each Unit consists of a living area air space or spaces, a Garage area air space and/or a Balcony area air space, all as shown and described on the Condominium Plan.

ARTICLE 2. - THE PROPERTY

2.1 *Project Subject to Restated Declaration.* The entire Project shall be subject to this Restated Declaration.

2.2 *Partition.* There shall be no judicial partition of the Project or any part of it, nor shall Declarant or any person ~~acquiring~~ an interest in the Project or any part of it seek any judicial partition, except as follows:

- (a) If two (2) or more persons own any Condominium as tenants in common or as joint tenants, they may maintain a partition action as to their cotenancy;
- (b) The Owner of a Condominium may maintain a partition action as to the entire Project, as if all of the Owners in the Project were tenants in common in the same proportion as their interests in the Common Area, and an appropriate court orders partition by sale of the entire Project, upon a showing of any one (1) of the following:
 - (1) More than three (3) years before the filing of the action, the Project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction;
 - (2) The Project has been in existence for more than fifty (50) years and is obsolete and uneconomical, more than a fifty percent (50%) of the membership oppose repair or restoration of the Project;
 - (3) Three-fourths (3/4) or more of the Project is destroyed or substantially damaged and more than fifty percent (50%) of the membership oppose repair or restoration of the Project subject to the provisions of Article 9 herein and distribution requirements set forth in Article 9 herein; or
 - (4) The conditions of sale comply with the sale and distribution requirements set forth in Article 9 herein.

2.3 *Presumption Regarding Boundaries of Units.* In interpreting deeds, declarations, plans, the existing physical boundaries of a Unit, including any Unit reconstructed in substantial accordance with the Condominium Plan and the original construction plans for the Project, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed,

Condominium Plan, or this Restated Declaration. This presumption applies regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or described in the deed and this Restated Declaration, and the boundaries of the building as constructed or reconstructed.

2.4 *Prohibition Against Severance of Elements.* Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Unit shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

ARTICLE 3. - ASSOCIATION

3.1 *Organization of the Association.* The Association is incorporated as a non-profit corporation organized under the California Non-profit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Project and is charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents.

3.2 *Membership.* Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Condominium is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Condominium. All memberships shall be appurtenant to the Condominium conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Condominium shall automatically transfer the appurtenant membership to the transferee.

3.3 *Voting Rights.* All voting rights of the Owners shall be subject to the following restrictions, limitations, and requirements:

- (a) Except as provided in this Article, on each matter submitted to a vote of the Owners, each Owner shall be entitled to cast one (1) vote for each Condominium owned;
- (b) Fractional votes shall not be allowed. When there is more than one (1) record Owner of a condominium (co-owners), all of the co-owners shall be Members, but only one (1) of them shall be entitled to cast

the single vote attributable to the Condominium. Co-owners should designate in writing one (1) of their owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Condominium's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Condominium on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote;

- (c) Except as otherwise provided in the Governing Documents, any provision of the Governing Documents that requires the approval of a specific percentage of the voting power of the Association (rather than simply requiring the vote or written consent of a majority of a quorum) shall require the approval, by vote or written assent, of the specified percentage of the voting power of the membership; and
- (d) The Board shall fix, in advance, a record date or dates for the purpose of determining the Owners entitled to notice of, and to vote at, any meeting of Owners. The record date for notice of a meeting shall not be more than sixty (60) nor less than ten (10) days before the date of the meeting. The record date for voting shall not be more than sixty (60) days before the date of the meeting or before the date on which the first written ballot is mailed or solicited. The Board may also fix, in advance, a record date for the purpose of determining the Owners entitled to exercise any rights in connection with any other action. Any such date shall not be more than sixty (60) days prior to the action.

3.4 *Membership Meetings.* Provisions of the Bylaws governing meetings of the Members is hereby incorporated by reference.

3.5 *General Powers and Authority.* The Association shall have all the powers of a non-profit mutual benefit corporation organized under the California Non-profit Mutual Benefit Corporation Law, subject to any limitations set forth in this Restated Declaration or in the Articles and Bylaws of the Association. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it by the Governing Documents. Its powers shall include, but are not limited to, the following:

- (a) The Association shall have the power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set out in Article 4 herein;
- (b) The Association shall have the power to adopt reasonable Rules and Regulations governing the use of the Project, the Common Area, its facilities, and any Association owned property. The Rules and Regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants, and invitees; rules of conduct; the setting of reasonable administrative fees, deposits, fees for the use of recreational facilities, and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation any provisions of the Governing Documents. A copy of the current Rules and Regulations, if any, shall be given to each Owner or shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency;
- (c) The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to the following:
 - (1) Enforcement of the Governing Documents;
 - (2) Damage to the Common Area;
 - (3) Damage to the Units that the Association is obligated to maintain or repair;
 - (4) Damage to the Units that arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair; and
 - (5) Enforcement of payment of assessments in accordance with the provisions of Article 4.8 herein.
- (d) In addition to the general power of enforcement described above, the Association may discipline Owners for violation of any of the provisions of

the Governing Documents by suspending the violator's voting rights and privileges for use of the Common Area and facilities, and/or by imposing monetary penalties or fines, subject to the following limitations:

- (1) The accused Owner shall be given notice and an opportunity to be heard prior to the imposition of any monetary penalty or fine with respect to the alleged violation in accordance with the provisions of Section 7341 of the California Corporations Code;
 - (2) Any suspension of an Owner's Association privileges shall not exceed thirty (30) days for each violation;
 - (3) Any monetary penalty shall be established from time to time for each violation in an amount to be determined by the Board; and
 - (4) Except as provided in Article 4 herein relating to foreclosure for failure to pay assessments, or as a result of the judgment of a court or a decision arising out of arbitration, the Association shall in no way abridge the right of any Owner to the full use and enjoyment of his or her Unit.
- (e) The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to its officers, employees, committees, or agents, including a professional management agent. The term of any agreement with a manager for the furnishing of maintenance, repair, and related services shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Such an agreement shall be terminable by either party for cause on thirty (30) days' written notice.
- (f) The Association's agents or employees shall have the right to enter any Unit when necessary in connection with any maintenance, landscaping, or construction work for which the Association is responsible. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable, and any damage caused thereby shall be repaired by the Association at its own expense.

3.6 *Duties of the Association.* In addition to the duties of the Association, its agents and employees elsewhere in the Governing Documents, the Association shall be responsible for the following:

- (a) The Association, acting through the Board, shall operate, maintain, repair, and replace the Common Area and its improvements, all landscaping, and the exterior surfaces of all structures and Units in the Project, or contract for the performance of that work, subject to the provisions of Article 9 herein relating to destruction of improvements, Article 10 herein pertaining to eminent domain, and Article 5 herein relating to damage caused by Owners. The foregoing areas and improvements shall be kept in a clean, sanitary, and attractive condition.

Further, the Association shall be responsible for the repair to the Common Area damaged by wood destroying pests or organisms. The Board shall make such repairs as and when necessary, as determined in its sole discretion. If infestation is present, the Association shall have the right to cause the temporary, summary removal of any occupant of the Project while the Association has the infestation treated. The temporary relocation must be preceded by notice provided by the Association pursuant to Civil Code Section 1364. The Owner of a Unit shall pay the costs of any temporary relocation of any occupant of the Unit occasioned by the presence of wood-destroying pests or organisms.

- (b) The Association shall use the maintenance fund described in Article 4 herein to, among other things, acquire and pay for the following:
 - (1) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Units;
 - (2) The insurance policies described in Article 8 herein;
 - (3) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area; and
 - (4) Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Restated Declaration.

(c) The Association shall prepare a pro forma operating budget for each fiscal year, and shall distribute a copy of the budget to each Owner not less than forty-five (45) and not more than sixty (60) days prior to the beginning of the fiscal year. In lieu of the distribution of the financial statement, the Board may elect to distribute a summary of the statement to each Owner with a written notice that the statement is available at the business office of the Association or designated location and that copies will be provided upon written request and at the expense of the Association. The Association shall provide the copy to the Owner within five (5) working days of the receipt of the written request. The budget shall contain at least the following:

- (1) The estimated revenue and expenses on an accrual basis;
- (2) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
 - (ii) As of the end of the fiscal year for which the study is prepared: (a) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components, and (b) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain those major components;
 - (iii) The percentage that the amount determined for purposes of clause (b) of subparagraph (ii), above, is of the amount determined for purposes of clause (a) of subparagraph (ii), above;

[For example: if (ii)(a), the estimated reserves needed, is \$100,000.00, and (ii)(b), actual reserves set aside, is \$75,000.00, then (iii) means that 75% of the estimated reserves needed have actually been set aside. The foregoing example is for illustration only and is not intended to reflect the Association's actual reserves or estimated reserves needed]

The summary of the Association's reserves disclosed pursuant to this subsection (2) shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;

- (3) 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 therefor; and
 - (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain.
- (d) Within one hundred twenty (120) days after the close of each fiscal year, the Association shall prepare and distribute to the Owners an annual report consisting of the following:
- (1) A balance sheet as of the end of the fiscal year;
 - (2) An operating (income) statement for the fiscal year;
 - (3) A statement of changes in financial position for the fiscal year; and
 - (4) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. If this report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared without independent audit or review from the books and records of the Association.
- (e) Within sixty (60) days before the beginning of each fiscal year, the Association shall prepare and distribute to the Owners a statement describing the

Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessment against Owners.

- (f) The signatures of at least two (2) Directors or one (1) Director and one (1) Officer who is not a Director shall be required for the withdrawal of moneys from the Association's reserve accounts.
- (g) The Association shall provide any Owner with the following documents within ten (10) days of the mailing or delivery of a written request therefor:
 - (1) A copy of the Governing Documents;
 - (2) A copy of the most recent financial statement;
 - (3) A written statement from an authorized representative of the Association specifying (i) the amount of the Association's current regular and special assessments and fees, (ii) the amount of any assessments levied on the Owner's Unit that are unpaid on the date of the statement; and (iii) the amount of late charges, interest, and costs of collection that, as of the date of the statement, are or may be made a lien on the Owner's Unit pursuant to Section 4.8 herein;
 - (4) Any change in the Association's current regular and special assessments and fees which have been approved by the Board, but which have not become due and payable as of the date disclosure is provided pursuant to this subsection (4);
 - (5) The Association may charge the Owner a reasonable fee to cover its costs to prepare and reproduce the items requested above.

3.7 *Board of Directors.* The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in the Bylaws, which is hereby incorporated by reference.

3.8 *Inspection of Books and Records.* Those provisions of the Bylaws governing the duty of the Association to maintain certain books and records and the rights of Owners and Directors to obtain and inspect those books and records, is hereby incorporated by reference.

ARTICLE 4. - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Condominium is deemed to covenant and agree to pay to the Association the regular and special assessments levied pursuant to the provisions of this Restated Declaration. A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall be a personal debt of the Owner of the Condominium at the time the assessment or other sums are levied. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Area or abandonment of the Owner's Condominium.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy regular and special assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into a maintenance fund to be used for the foregoing purposes.

4.3 **Regular Assessments.** Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each fiscal year, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies and replacements, with adjustments made for any expected income and surplus from the prior year's fund. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. The estimated cash requirement shall be assessed to each Owner as a regular assessment according to the ratio of the number of Units owned by that Owner to the total number of Units in the Project subject to assessment. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 **Special Assessments.** If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year, it shall make a special assessment for the additional amount needed. Special assessments shall be levied and collected in the same manner as regular assessments.

4.5 **Lien For Monetary Penalty.** In the event the Board of Directors imposes a monetary penalty or fine pursuant to Section 3.5(b) herein against a Unit Owner, that fine may become a lien, enforceable, pursuant to Section 4.10 herein.

4.6 *Limitations on Assessments.* Except in emergency situations, the Board may not, without the approval of Owners constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code Sections 7510 - 7527 and 7613, impose a regular annual assessment per Unit that is more than twenty percent (20%) greater than the regular annual assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or the maximum amounts allowed by law). A special assessment imposed pursuant to Section 1365.5(c) of the California Civil Code and Section 3.9(f) of the Bylaws is not subject to the five percent (5%) limitation stated above. For purposes of this Section, a "quorum" means more than fifty percent (50%) of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- (a) Required by a court order;
- (b) Necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety in the Project is discovered; or
- (c) Necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget.

Before the Board may impose or collect an assessment in an emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.7 *Owner Notice of Increase in Assessments.* The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

4.8 *Limitation on Assessment Increases.* Annual increases in regular assessments for any fiscal year, as authorized by Section 4.6, above, shall not be imposed unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division

2 of Title 1 of the California Corporations Code and Section 7613 of the California Corporations Code. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners of the Association.

4.9 Late Charges. Late charges may be levied by the Association against an Owner for the delinquent payment of regular and special assessments. An assessment, including any installment payment, is delinquent fifteen (15) days after its due date. If an assessment is delinquent the Association may recover all of the following from the Owner:

- (a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees;
- (b) A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), or the maximum amount allowed by law, whichever is greater;
- (c) Interest on the foregoing sums, at an annual percentage rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments.

4.10 Enforcement of Assessments and Late Charges. A delinquent regular or special assessment, fine, monetary penalty, and any related late charges, reasonable costs of collection (including attorneys' fees), penalties, and interest assessed in accordance with Section 4.9 herein shall become a lien upon the Condominium when a notice of delinquent assessment is duly recorded as provided in Section 1367 of the California Civil Code. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Condominium, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board.

Unless the Board considers the immediate (without notice) recording of the notice to be in the best interests of the Association, the notice may not be recorded until fifteen (15) calendar days after the Association has delivered a written demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

Any such lien may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted pursuant to Section 2934(a) of the California Civil Code, in accordance with the provisions of Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If the sums specified in the notice of delinquent assessment are paid before the completion of any judicial or non-judicial foreclosure, the Association shall record a notice of satisfaction and release the lien. Upon receipt of a written request by the Owner, the Association shall also record a notice of rescission of any declaration of default and demand for sale.

4.11 Statement of Delinquent Assessment. The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Condominium. The Association may charge the Owner a reasonable fee to cover its costs to prepare and reproduce the requested statement.

4.12 Maintenance Accounts. The Board shall establish no fewer than two (2) separate accounts ("Maintenance Accounts"), into which shall be deposited all monies paid to the Corporation and from which disbursements shall be made, as provided herein, in the performance of functions by the Corporation under this Declaration and the Bylaws. The Maintenance Accounts shall be established as separate trust savings or trust checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation. The Maintenance Accounts shall include:

- (a) an Operating Account for current Common Expenses of the Corporation;
- (b) a Reserve Account for capital improvements, replacements, painting and repairs of the Common Area; and
- (c) any other accounts which the Board may establish to the extent necessary under the provisions of this Declaration.

The Board shall not commingle any amounts deposited into any of the Maintenance Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by the Declaration.

ARTICLE 5. - USE RESTRICTIONS AND COVENANTS

5.1 *Exclusive Use of Common Area.* Certain portions of the Common Area may be designated for the exclusive use of certain Owners of Units and shall be appurtenant to those Units as described herein. Any such area may not be transferred independently of any other interest of the Owner. The Association may designate portions of the Common Area for the exclusive use of one or more Owners, provided that the designation is not inconsistent with the rights of any Owner, and such designation includes appropriate provisions for maintenance, repair and replacement of such areas and any improvements thereon.

The foregoing notwithstanding, all internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of the Unit, shall be allocated exclusively to that Unit. The Owner of the Unit shall be entitled to reasonable access to the Common Area for the purpose of maintaining this wiring, subject to the consent of the Association and to any other conditions reasonably imposed by the Association. The Association's consent shall not be unreasonably withheld.

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

- (a) The Association shall have an easement in, to, and throughout the Common Area and its improvements thereon to perform its duties and exercise its powers;
- (b) Except as provided in this Restated Declaration, there shall be no judicial partition of the Common Area, nor shall Declarant or any person acquiring an interest in all or any part of the Project seek any judicial partition;
- (c) Subject to the provisions of this Restated Declaration, each Owner has non-exclusive rights of ingress, egress, and support through the Common Area. These rights shall be appurtenant to such deed of conveyance. However, these rights shall not interfere with, and shall be subordinate to, any exclusive right to use any portion of the Common Area;
- (d) The Members' rights of use and enjoyment of the Common Area shall be subject to the restrictions set forth in the Governing Documents, including the right of the Association to:
 - (1) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Project;

- (2) Reasonably limit the number of guests and tenants using the Common Area;
 - (3) Assign or otherwise control the use of any unassigned parking spaces within the Common Area;
 - (4) Suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area for any period during which the Owner is delinquent in the payment of any assessment;
 - (5) Cause the construction of additional improvements in the Common Area, or to cause the alteration or removal of existing improvements on the Common Area;
 - (6) Grant, dedicate, consent to, or join in the grant or conveyance of easements, licenses, or rights-of-way in, on, or over the Common Area;
 - (7) Reasonably restrict access to roofs, maintenance facilities or areas, landscaped areas, and similar areas of the Project;
 - (8) Approve any proposed alteration of or modification to the Common Area or any Unit;
 - (9) Prohibit placement of items on stairways.
- (e) The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, and each Unit Owner, in accepting his or her deed to the Unit, expressly consents to these easements. However, no such easement can be granted if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Unit;
- (f) An Owner who has sold his or her Condominium to a contract purchaser or who has leased or rented the Condominium shall be deemed to have delegated his or her rights to use and enjoy the Common Area to any contract purchaser or tenant who resides in the Owner's Condominium, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective;

5.3 *General Restrictions on Use.* In exercising the right to occupy or use a Unit, including any Garage and/or Balcony, or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not do any of the following:

- (a) Attempt to further subdivide a Unit, Garage and/or Balcony without obtaining the prior approval of the Association;
- (b) Occupy or use a Unit, or permit all or any part of such Unit to be occupied or used, for any purpose other than as a private residence. Nothing in this Restated Declaration shall prevent an Owner from leasing or renting his or her Unit, provided that it is not for transient or hotel purposes, is for a period of at least thirty (30) days, is subject to the Governing Documents and any Rules and Regulations, and the Owner assumes responsibility for tenant actions;
- (c) Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents;
- (d) Perform any act or keep anything on or in any Unit, Garage and/or Balcony, or in the Common Area, that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept in his or her Unit or in the Common Area that would result in the cancellation of insurance on any Unit or on any part of the Common Area or that would violate any law;
- (e) Store gasoline, kerosene, cleaning solvents, or other flammable liquids or other substances on the Common Area or in any Unit, Garage and/or Balcony; provided, however, that reasonable amounts of these liquids may be placed in appropriate metal containers and properly stored in the storage spaces;
- (f) Display any sign to the public view on or from any Unit, Balcony or Garage or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale, lease, or exchange as provided in the Rules and Regulations;
- (g) Raise, breed, or keep animals, livestock, or poultry of any kind in a Unit, Garage and/or Balcony or on the Common Area, except dogs, cats, or other usual and ordinary household pets, which may be

kept in Units, subject to the Rules and Regulations (if any);

- (h) Engage in any illegal, noxious or offensive activity in any part of the Project;
- (i) Alter or modify the exterior of any improvements located in or on a Unit, Garage or Balcony without first obtaining the written consent of the Board or duly appointed Architectural Control Committee;
- (j) Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board;
- (k) Park any automobile or other motor vehicle in the Common Area except in a space designated for the Owner by the Board or the Governing Documents. The Board, in its discretion, may adopt reasonable Rules and Regulations governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area;
- (l) Allow any Balcony or Patio area to become dirty, messy or unsightly, to fall into disrepair or to pose a threat to the health or safety of other owners;
- (m) Use any uncovered parking space for purposes other than parking for guests and/or invitees or as otherwise allowed by the Board.

5.4 *Damage Liability.* Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property, to the extent that the damage is not covered by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Condominium, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.5 *Equitable Servitude.* The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

ARTICLE 6. - REPAIR AND MAINTENANCE

6.1 *Maintenance by Owners.* Each Owner shall be responsible for the maintenance, repair and replacement of the following items relating to such Owner's Condominium Unit, provided such systems are used or operated exclusively by such Owner and not in common:

- (a) the glass doors and windows attached to the Unit, whether interior or exterior, including any attached security bars and the screens, metal frames and tracks of such doors and windows, and fixtures attached thereto, provided that replacement of exterior items shall be subject to the requirements of Article 7, herein;
- (b) the interior areas of such Owner's Unit, Garage and Balcony, including the interior surfaces of doors, walls, floors and ceilings;
- (c) all appliances whether "built-in" or "free-standing" within the Unit;
- (d) the plumbing, heating, ventilating and air-conditioning systems, if any, exclusively servicing such Owner's Condominium, wherever located;
- (e) the television cable equipment, wires and connections, telephone wiring, and all related appliances, equipment and fixtures;
- (f) the maintenance of the interior surfaces of any areas appurtenant to such Owner's Unit and any Balcony or Garage in a clean manner, consistent with the surrounding properties, and to insure that such area does not pose a threat to the health, safety or welfare of other Owners; and
- (g) the maintenance, repair and replacement of the lighting fixtures, including light bulbs, located within such Unit, and replacement of the light bulbs in the Garage and Balcony, and any other areas, including the light bulbs in the lighting fixtures located at the front entrance to said Unit, provided such fixtures are not used in common with other Owners, in which case the Association shall be responsible for replacement of the light bulbs.

6.2 *Maintenance by Association.* The Association shall be responsible for the maintenance, repair and replacement of the following:

- (a) All Common Area (1) facilities, including plumbing, heating, ventilating and air conditioning facilities not exclusively servicing a Condominium, (2) fixtures

(lighting or otherwise) including those located in the Common Areas which are not used exclusively by one Owner, and those lighting fixtures located in Garages, Balconies and at front entrances of the Units, (3) improvements including the exterior surfaces of roofs, doors and foundations of all buildings and structures, and (4) landscaping and furnishings, equipment and all property that may be acquired by the Association;

- (b) All Common Area walls, railings, fences and stairs; and
- (c) The maintenance and repair of all parking and driving areas and open Parking Spaces.

Should the maintenance or repair herein described result from the negligent act or neglect of an Owner, his guests or licensees, the Owner shall reimburse the Association for such maintenance or repair.

ARTICLE 7. - ARCHITECTURAL AND DESIGN CONTROL

7.1 *Architectural and Design Approval.* No building, addition, wall, fence, patio cover, spa or other alteration or addition shall be commenced, constructed, maintained, or permitted to remain in any Unit or on the Common Area until complete plans and specifications of the proposed work have been submitted to and approved by the Architectural Control Committee.

7.2 *Committee Powers.* The Committee shall have the power to review any proposed plans and specifications to determine whether they are compatible with the standards of design, construction, and quality of the Project, and that they conform with any Rules and Regulations, and, if they are not, shall require that changes be made before approval. The Committee shall have the duty to adopt reasonable procedures for Owners to follow in submission of their plans and specifications, and to distribute those procedures to Owners. Additionally, the Committee shall have the power and authority to inspect the constructed improvement for conformance with the approved plans and specifications.

7.3 *Architectural Control Committee.* The Architectural Control Committee shall consist of at least three (3) but not more than five (5) members, formed as follows:

- (a) The Board shall have the right to appoint all of the members of the Committee.
- (b) Members appointed to the Committee by the Board shall be Members of the Association.
- (c) Members shall serve two (2) year terms. Notwithstanding the foregoing, all members of the Commit-

tee shall serve at the will of the Board and may be removed by the Board at any time with or without cause.

7.4 *Board of Directors.* All decisions of the Architectural Control Committee are subject to review by the Board of Directors and may be appealed to the Board. The Committee shall notify the Board of all violations of this Article and of any non-compliance with its rulings or with the plans and specifications submitted to and approved by it. Thereafter, the Board shall take any actions it deems necessary, in accordance with the provisions of this Restated Declaration.

ARTICLE 8. - INSURANCE

8.1 *Fire and Casualty Insurance.* The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration.

8.2 *General Liability Insurance.* The Association shall obtain and maintain a policy or policies insuring the Association, Manager, Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and its Members, with respect to the Common Area. Limits of liability under the insurance shall not be less than that commonly attributed to similar projects in the area covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion.

8.3 *Other Association Insurance.* The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association may also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage may be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or its Managing Agent at any given time during the term of each bond. However, the aggregate amount of these bonds may not be less than that which is common to similar projects. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition

insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. The Association may purchase such other insurance as the Board in its discretion considers necessary or advisable.

8.4 *Trustee for Policies.* The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 9 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

8.5 *Individual Insurance.* An Owner shall separately insure his or her personal property, which shall include, without limitation, Owner installed floor coverings, and shall obtain and maintain personal liability and property damage liability insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, and the institutional First Mortgagee of the Owner's Unit. The Owner shall integrate his or her personal insurance with the Association's insurance.

8.6 *Insurance Premiums.* Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

ARTICLE 9. - DAMAGE OR DESTRUCTION

9.1 *Duty to Restore and Replace.* If any of the improvements in the Common Area are destroyed or damaged, the Association shall restore and replace the improvements, using the proceeds of insurance maintained as required herein, subject to the provisions of this Article.

9.2 *Proceeds Justifying Automatic Restoration and Repair.* If the proceeds of any insurance maintained for reconstruction or repair of the Project are equal to at least eighty-five percent (85%) of the estimated cost of restoration and repair, the Board shall use the insurance proceeds for that purpose, shall levy a special assessment or provide the necessary additional funds, and shall have the improvements promptly rebuilt, unless the Owners by the vote or written consent of not less than seventy-five percent (75%) of the total voting power of the Association object to the

restoration or repair work within sixty (60) days of the damage or destruction.

9.3 Approval by Owners of Special Assessment for Certain Restorations and Repairs. If the proceeds of any insurance maintained herein for reconstruction or repair of the Project are less than eighty-five percent (85%) of the estimated cost of restoration and repair, any restoration and repair work must be authorized by the vote or written consent of Owners representing at least seventy-five percent (75%) of the total voting power of the Association and beneficiaries of at least seventy-five percent (75%) of the First Mortgages on Units in the Project. This authorization must be given within sixty (60) days of the damage or destruction, and must authorize the Board to levy a special assessment to provide the necessary funds over and above the amount of any insurance proceeds available for the work.

9.4 Ordering Reconstruction or Repair. If reconstruction or repair work is to take place pursuant to this Article, the Board shall take the following steps:

- (a) Prepare the necessary documents, including an executed and acknowledged certificate stating that damage has occurred, describing it, identifying the improvement suffering the damage, the name of any insurer against whom the claim is made, and the name of any insurance trustee, stating (if applicable) that the consent described above has been obtained, and reciting that the certificate is mailed to all Owners;
- (b) Obtain firm bids (including the obligation to obtain a performance bond) from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications and, as soon as possible thereafter, call a special meeting of the Owners to consider the bids. If the Board fails to do so within ninety (90) days after the casualty occurs, any Owner may obtain the bids and call and conduct the special meeting in the manner required by this Article. At the meeting, Owners representing at least sixty-seven percent (67%) of the total voting power may elect to reject all of the bids and thus not to rebuild, or Owners representing at least fifty-one percent (51%) of the total voting power may elect to reject all bids requiring amounts exceeding the available insurance proceeds by more than fifty percent (50%). Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable. Failure to call the special meeting or to repair the casualty damage occurred shall be deemed for all purposes to be a decision not to rebuild;

- (c) If a bid is accepted, the Board shall let the contract to the successful bidder and distribute the insurance proceeds to the contractor as required by the contract; and
- (d) Levy a special assessment to make up any deficiency between the total insurance proceeds and the contract price for the repair or rebuilding, with the assessment and all insurance proceeds, whether or not subject to liens or mortgages, to be used solely for the rebuilding. This assessment shall be charged equally to each Unit. If any owner fails to pay the special assessment within fifteen (15) days after it is levied, the Board shall enforce the assessment in the manner described in Article 4 herein.

9.5 Election Not to Rebuild. Upon an election not to rebuild, the Board, as soon as reasonably possible and as agent for the Owners, shall execute and record a certificate stating that the Association shall not rebuild. The Board shall also sell the entire Project on terms acceptable to the Board and free from the effect of this Restated Declaration, which shall terminate upon the sale. The net proceeds shall then be distributed to the Owners and their respective Mortgagees proportionately according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

If an election not to rebuild is made, all insurance proceeds available for restoration or repair shall be distributed to the Owners as follows: proceeds for damage or destruction to Units shall be distributed to the Owners of the damaged Units according to the relative fair market value of the Units. This value shall be as of the date immediately preceding the damage or destruction, and shall be determined by an independent appraiser who shall be selected in the manner described above. Any proceeds from damage or destruction to the Common Area shall be distributed to the Owners equally.

Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one (1) or more transactions, for the benefit of all Owners when partition of the Project may be had under Civil Code section 1359 and under the circumstances authorizing partition under this Restated Declaration. The power of attorney shall (i) be binding on all Owners, whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or

written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all institutional first Mortgagees; and (iii) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

9.6 *Minor Restoration and Repair Work.* The Association shall order restoration or repair work without complying with the other provisions of this Article whenever the estimated cost of the work does not exceed insurance proceeds by more than twenty-thousand dollars (\$20,000.00). If insurance proceeds are unavailable or insufficient, the Association shall levy a special assessment for the cost of the work. The Assessment shall be levied in the manner described herein.

ARTICLE 10. - EMINENT DOMAIN

10.1 *Definition of Taking.* As used in this Article, "taking" means condemnation by any governmental agency having the power of eminent domain or by sale under threat of the exercise of that power.

10.2 *Sale to Condemning Authority.* If a governmental agency proposes to condemn all or a portion of the Project, the Association may sell all or any portion of the Project to the condemning authority if all Owners and institutional Mortgagees consent in writing to the sale. Any such sale shall be made by the Association in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney which each Owner grants to the Board. The sales price shall be any amount deemed reasonable by the Board.

10.3 *Total Sale or Taking.* A total sale or taking occurs when (a) there is a permanent taking or a sale to a condemning authority by the Association of an interest in all or part of the common area or of all or part of one or more units, which substantially and adversely affects the ownership, operation, and use of the Project in accordance with the provisions of this Restated Declaration; and (b) one hundred twenty (120) days have passed since the effective date of the taking and the Owners whose Units remain habitable after the taking ("remaining Units") have not by affirmative vote of a majority of their entire voting interest approved the continuation of the Project and the repair, restoration, and replacement to the extent feasible of the Common Area and the remaining Units. Within sixty (60) days after the effective date of any sale or taking which in the opinion of the Board would constitute a total sale or taking, the Board shall call a special meeting to determine whether or not the Owners of the remaining units will continue the Project as provided in this Section. If

there is a total sale or taking, the Board shall distribute the proceeds of the total sale or taking and the process of any sale pursuant to a partition action, after deducting all incidental fees and expenses related to the taking or partition, to all Owners and their Mortgagees in accordance with the court judgment or the agreement between the condemning authority and the Association, if any such judgment or agreement exists. In all other cases, the proceeds shall be distributed among the Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation as determined by independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Association and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

10.4 *Partial Sale or Taking.* A partial sale or taking occurs if there is a sale or taking that is not a total sale or taking as defined herein. The proceeds from any sale or taking shall be disbursed in the following order or priority, which shall be incorporated into any court judgment of condemnation or agreement between a condemning authority and the Association:

- (a) To the payment of related fees and expenses.
- (b) To Owners of Condominiums that have been sold or taken and their respective Mortgagees, as their interests may appear, in an amount up to the fair market value of the Condominium as that value is determined by the court in the condemnation proceeding or, in the absence of such a determination, by an appraiser selected in the manner described herein. Such a payment shall immediately terminate the recipient's status as an Owner, and the Board, acting as the attorney-in-fact of the remaining Owners, shall amend this Restated Declaration and any other documents, as appropriate, to delete the sold or taken Condominiums from the Project and to allocate the former Owner's undivided interest in the Common Area to the remaining Owners, on the basis of their relative ownership of the Common Area. Each Owner whose interest is terminated pursuant to this Section shall, at the request of the Board and expense of the Association, execute and acknowledge any deed or other instrument that the Board deems necessary to evidence the termination.
- (c) To the payment of severance damages to First Mortgagees of record of remaining units affected by the partial sale or taking, to the extent that the Mortgagees can prove that their security has been impaired by the taking.

- (d) To the repair, restoration, and replacement of the Common Area and any portions of the remaining Units that the Owners are not obligated to restore, to the extent feasible.

ARTICLE 11. - RIGHTS OF MORTGAGEES

11.1 *Warranty.* Declarant hereby warrants that Mortgagees of Units in the Project shall be entitled to the rights guaranties set forth in this Article. No amendment of this Article shall affect the rights of the holder of any First Mortgage recorded prior to the recordation of the amendment who does not join in the execution of the amendment.

11.2 *Subordination.* Notwithstanding any other provision of this Restated Declaration, liens created under Article 4 herein upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of, the indebtedness secured by any recorded First Mortgagee upon such an interest made in good faith and for value, provided that any transfer of a Unit as the result of a foreclosure or exercise of a power of sale shall not relieve the new Owner from liability for any assessments that become due after the transfer. Such a transfer shall extinguish the lien of assessments that were due and payable prior to the transfer of the Unit. Such subordination in no way relieves a delinquent Mortgagor of its personal obligation to pay assessments.

11.3 *Right to Furnish Mortgage Information.* Each Owner hereby authorizes the First Mortgagee of a First Mortgage on the Owner's Condominium to furnish information to the Board concerning the status of the First Mortgage and the loan that it secures.

ARTICLE 12. - AMENDMENTS

This Restated Declaration may be amended by the vote or written consent of Owners representing not less than fifty-one percent (51%) of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in the county in which this Project is located.

ARTICLE 13. - GENERAL PROVISIONS

13.1 *Term.* The provisions of this Restated Declaration shall continue in effect for a term of fifty (50) years from the date of execution and shall thereafter be automatically extended for successive periods of ten (10) years, unless and until the membership of the Association decides to terminate it.

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

13.3 *Severability.* The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one (1) provision shall not affect the validity or enforceability of any other provision.

13.4 *Binding.* This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding and the Owners and their heirs, grantees, tenants, successors, and assigns.

13.5 *Interpretation.* The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision of this Restated Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Restated Declaration.

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

13.7 *Fair Housing.* Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, or national origin.

13.8 *Number and Headings.* As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

13.9 *Attorneys Fees.* In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy

its attorneys fees and costs so incurred. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys fees and costs. Said costs and attorneys fees shall constitute a lien on the Unit which is enforceable pursuant to Article 4 herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 12th day of OCTOBER, 1993.

DECLARANT:

Americana Condominium Owners' Association, Inc.,
a California nonprofit corporation

By: Mary K. Sandowicz
President

By: [Signature]
Secretary CONNIE VERA

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } ss.

On 10-12-93 before me, PATTIE GREEN
personally appeared CONNIE VERA

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature]



(This area for official notarial seal)

(Attach Proper Notary Certificate(s) of Acknowledgment)

3008 (4-84) (General) First American Title Company

EXHIBIT "A" - PROJECT LEGAL DESCRIPTION

Lots 258 and 259, Pacifica Hills Unit No. 8, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 7010, filed in the Office of the County Recorder of San Diego County, California.