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POST-TOWN HALL MEETING DRAFT 5
DATED FEBRUARY 3, 2023

**RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

**BALBOA TERRACE HOMES ASSOCIATION
a California nonprofit corporation**

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.

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RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

BALBOA TERRACE HOMES ASSOCIATION

a California nonprofit corporation

THIS RESTATED Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) is made by all persons who own Lots in that certain real property planned residential development known as Balboa Terrace Homes Association located in the City and County of San Francisco, California. These CC&Rs apply to and bind all properties previously covered by covenants, conditions and restrictions. Without reducing the number of properties covered by these CC&Rs, these CC&Rs apply to the following properties:

1. The real property shown on the “Map of Balboa Terrace, San Francisco, California” recorded September 8, 1920 in Map Book “J” at Page 4;
2. The real property shown on the “Map of Balboa Terrace Addition, San Francisco, California” recorded December 26, 1924 in Map Book “K” at Pages 4, 5, and 6; and
3. The real property shown on the “Map of Blocks 3260 to 3269, inclusive, Balboa Terrace Addition, San Francisco, California” recorded June 22, 1927 in Map Book “L” at pages 29 to 33 inclusive.

By this instrument, (1) except for any recorded covenants affecting only a single Lot in the properties covered by these CC&Rs and/or (2) unless expressly otherwise provided herein, the Members of the Association hereby fully amend and restate, in their entirety, the original Deed Restrictions; the “Extension of Term of Conditions and Confirmation of Charges Upon Certain Real Estates Commonly Known as Balboa Terrace situate in the City and County of San Francisco, State of California (the “First Amendment”) recorded on November 19, 1959 in Book A57, at Page 53 through 56; the “Amendment and Further Extension as Amended of Term of Conditions and Confirmation of Charges Upon Certain Real Estate Commonly Known as Balboa Terrace situate in the City and County of San Francisco, State of California” (the “Second Amendment”) recorded on December 21, 1979 in Book C917, at Pages 218 through 223; the “Third Amendment to Modify and Extend Term of Original Declaration” (the “Third Amendment”) recorded on September 18, 2000 as Recorder’s Document No. 2000-G831827-00 on Reel H724, Image 0220; the “Fourth Amendment to Modify Conditions and Add Conditions to the Original Declaration” (the “Fourth Amendment”) recorded on April 18, 2007 as Recorder’s Document No. 2007-I370265-00 on Reel J372, Image 0317, collectively (the “Deed Restrictions”) as well as all amendments thereto, and substitute in their place these CC&Rs, which:

1. *Benefit Members.* Are for the benefit of Members of the Association;

2. *Benefit the Development.* Are for the benefit, enhancement and protection of the desirability, value and attractiveness of the Development and each Lot therein;
3. *Bind Successors in Interest.* Inure to the benefit of and be binding upon each successor in interest of the Association, each Member, Tenant, Resident, and occupant of any portion of the Development, as well as their respective heirs, personal representatives, grantees, Tenants, licensees, successors and assigns; and
4. *Run with the Land.* Run with the land and are binding upon all parties having or acquiring any right, title or interest in the Development or any portion of the Development, whether as sole owners, joint owners, Tenants, Residents, occupants or otherwise.

NOW THEREFORE, all Lots in the Development, as well as any conveyance, transfer, sale, assignment, rental, lease or sublease of a Lot, are deemed to incorporate the provisions of these CC&Rs. Each successor in interest is subject to all of the covenants, conditions and restrictions contained in these CC&Rs.

ARTICLE 1: DEFINITIONS

- 1.1 “Annual Meeting” means the annual meeting of the Members of the Association.
- 1.2 “Architectural Standards” means those rules and guidelines which govern the making of physical changes, alterations, repairs or Improvements to Lots and Common Areas.
- 1.3 “Articles” means the Association’s Articles of Incorporation.
- 1.4 “Assessment” means any Regular Assessment, Special Assessment, Reimbursement Special Assessment, or any other assessment levied, imposed, or assessed against a Member’s Lot in accordance with the provisions of the Governing Documents or applicable law.
- 1.5 “Association” means the Balboa Terrace Homes Association, a California nonprofit corporation. The Association includes, when the context requires, its Officers, Directors, employees and agents.
- 1.6 “Board” or “Board of Directors” means the Board of Directors of the Association.
- 1.7 “Budget” means a pro forma operating budget, showing the Association’s estimated revenue and expenses on an accrual basis, for a twelve (12) month period.
- 1.8 “Building” means any building or structure which is part of the Improvements of the Development.
- 1.9 “Bylaws” means the duly adopted Bylaws of the Association, including any amendments.

1.10 “CC&Rs” means this Restated Declaration of Covenants, Conditions and Restrictions and any amendments to these CC&Rs.

1.11 “Committee” means any committee appointed by the Board to assist in the management and administration of the affairs of the Association.

1.12 “Common Area” means the entire Development, except the Separate Interests owned by Members.

1.13 “Common Expenses” means the costs, expenses and charges in connection with maintaining, managing, insuring, operating, repairing, improving or replacing the Common Areas or managing the affairs of the Association. Common Expenses include, but are not limited to, those amounts reasonably necessary for Reserves.

1.14 “Davis-Stirling Act” means and refers to the Davis-Stirling Common Interest Development Act which is the portion of the California Civil Code beginning with Section 4000 that governs common interest developments.

1.15 “Development” means that certain residential development known as “Balboa Terrace” as described herein.

1.16 “Director” means any member of the Association’s Board of Directors.

1.17 “Governing Documents” means these CC&Rs and any other documents which govern the operation of the Association, including, but not limited to, the Articles of Incorporation, Bylaws, Architectural Standards, Rules and Regulations, and Election Rules, as may be amended from time to time.

1.18 “Improvements” means all buildings and other structures located within the Development, including, but not limited to, streets, sidewalks, and utilities.

1.19 “Lease” or “Rent” and all related forms of such words, whether such terms are capitalized or not, mean and include leases, rental agreements, licensing agreements, leasing, renting, licensing, to lease, to rent, to license and all related word forms as the context dictates.

1.20 “Lender” means the holder of a first mortgage or deed of trust given by a Member (or their predecessor in interest), the lien of which mortgage or deed of trust is superior to all other monetary encumbrances, except real property taxes and assessments.

1.21 “Lot” means any real property which is a Separate Interest such as lots, sublots, or parcels in the Development subject to these CC&Rs. Real property includes the improvements affixed to the Separate Interest.

1.22 “Manager” means any Person or company employed or retained by the Association to oversee the operation, maintenance and management of the Association.

1.23 “Member” means the Owner, whether one or more Persons, of a Lot within the Development as evidenced by a publicly-recorded deed to the Lot, but excluding any Person or

Persons having such an interest in the Lot merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from the record fee ownership of a Lot and may not be transferred, encumbered, pledged, alienated, or otherwise separated in any way, except in connection with the record sale of a fee interest of the Lot to which it is appurtenant. Where the CC&Rs impose restrictions on Member, the restriction also applies to Member's Tenants, and Member's and Tenant's family, guests and invitees.

1.24 "Membership Approval" or "Approval of the Membership" means approved or ratified by an affirmative vote of a majority of the votes represented and voting in a duly held election in which a Quorum is represented, which affirmative votes also constitute a majority of the required Quorum, unless otherwise provided in the Governing Documents.

1.25 "Mortgage" means a charge against real property given as security for a debt, such as a deed of trust.

1.26 "Mortgagee" means a beneficiary (or its assignee) under a deed of trust to a Lot and the term "First Mortgagee" refers to a beneficiary (or its assignee) under a deed of trust to a Lot with priority over all other Mortgagees and deeds of trust.

1.27 "Officer" means the president, vice-president, secretary, treasurer, and any other officer of the Association, as defined in the Bylaws.

1.28 "Operating Accounts" means any account into which the Association's Assessments are deposited and out of which the Association's operational expenses are paid.

1.29 "Owner" means the owner, whether one or more Persons, of the publicly-recorded fee title to any Lot within the Development, but excluding any Person or Persons having such an interest in the Lot merely as security for the performance of an obligation.

1.30 "Percentage Interest" means that undivided percentage ownership of the Common Area assigned to each Lot as provided on the Allocation Schedule for Assessments in Exhibit "A."

1.31 "Person" means a natural person, corporation, partnership, trust, association, or other entity, as recognized by law.

1.32 "Quorum" means a quorum of the Membership and is defined in the Association's Bylaws.

1.33 "Regular Assessments" means Assessments other than Special Assessments and Reimbursement Assessments, levied or imposed against Members in order to perform the Association's obligations under the Governing Documents or the law.

1.34 "Reimbursement Special Assessments" or "Reimbursement Assessments" means those Special Assessments levied against Members for expenses incurred by the Association arising out of: (i) actions or omissions of Members, Tenants or their respective family, guests,

invitees, vendors, or animals; (ii) materials or services provided to Members, Tenants or their respective family, guests, invitees, or pets; or (iii) conditions originating on a Lot.

1.35 “Renovation” means any improvements, additions, alterations, or modifications made by a Member in or to any Lot, Residence, or Common Area.

1.36 “Reserves” or “Reserve Accounts” means those monies set aside in a separate account for anticipated long-term maintenance, repair, replacement and restoration of major Common Area components of the Development or Improvements upon the Common Areas, and any other obligations of the Association that are authorized by either the Governing Documents or law.

1.37 “Residence” means a Person’s home; the place where someone lives.

1.38 “Resident” means any Person in actual possession of all or any portion of a Lot.

1.39 “Rules and Regulations” or “Rules” means the rules and regulations adopted by the Board to interpret and implement the Governing Documents and for the orderly conduct of the business of the Association.

1.40 “Separate Interest” means a lot, parcel, area, or space separately owned by a Member.

1.41 “Special Assessments” means Assessments levied from time to time against Members if at any time during the fiscal year the Regular Assessments are inadequate to perform the Association’s obligations under the Governing Documents or the law, including, but not limited to, Common Area maintenance and repairs, replacements, unexpected expenses, capital improvements, and emergency repairs.

1.42 “Tenant” or “Lessee” means a Person who has been given the right to temporary use and occupancy of a Lot owned by a Member, whether such right to occupy and use is granted by a lease, rental agreement, license, or any other writing and whether consideration is paid in the form of money or any other tangible or intangible thing of value.

1.43 “Utility Lines” means sewer lines, storm drains, water pipes, electricity lines, gas lines, telephone lines or cables, television cables, satellite dish cables, heating and air conditioning conduits, heating and air conditioning ducts, heating and air conditioning flues, fiber optic cables, data lines, community security systems, and other similar lines, pipes, cables, ducts, flues, and conduit pipes.

1.44 “Voting Power” means the total number of Lots entitled to vote.

1.45 Definitions of Other Terms. Unless the context clearly requires otherwise, all other terms are defined in the Davis-Stirling Act.

ARTICLE 2: MEMBERSHIP RIGHTS AND PRIVILEGES

2.1 Membership. Each Person is automatically a Member of the Association upon obtaining a publicly-recorded fee title ownership interest in a Lot and remains a Member until they cease to have such recorded fee ownership interest in a Lot.

- a. Membership Appurtenant to Lots. Membership in the Association is for the benefit of and appurtenant to the Lot to which it relates and may not be separated from the ownership of the Lot.
- b. No Membership for Security Interests. Membership does not include Persons who hold an interest in a Lot merely as security for the performance of an obligation.
- c. No Membership for Tenants. Tenants have the same rights to use the Common Areas as Members and have the same duties to follow the Association's Governing Documents but are not Members and have no right to vote.
- d. No Separate Transfer of Membership. No Member may transfer, pledge, or alienate in any way their membership in the Association, except upon the recorded transfer of the fee interest in the Lot to which it is appurtenant and then only to the transferee of such fee interest.
- e. Trusts. If title to a Separate Interest is held in the name of one or more trustees, subject to a trust, a sole trustee or one of several trustees is authorized to exercise the rights and privileges of Association membership. The designation of one of several trustees must be in writing with documentation confirming both the designation and the authority of the designator to do so.
- f. Impersonal Entities. If title to a Separate Interest is held by a legal entity that is not a natural Person, the governing authority of that legal entity shall have the power to appoint a natural Person who is authorized to exercise the rights and privileges of Association membership. The designation by the impersonal legal entity must be in writing with documentation confirming both the designation and its authority to do so.

2.2 Proof of Ownership. Proof of membership must be in the form of a recorded deed showing fee ownership of a Lot.

2.3 Voting Rights. In all matters submitted for a membership vote, Members are entitled to one (1) vote per Lot (regardless of the number of Members having an interest in the Lot).

2.4 Inspection of Records. Members have the right to inspect records of the Association as provided for in the Bylaws and by law.

2.5 Ingress, Egress and Support. Members have a nonexclusive easement appurtenant to and for the benefit of their Lots for ingress, egress, and support over, across and through the Common Area.

2.6 Easement for Use and Enjoyment. Members have a nonexclusive easement of use and enjoyment of the Common Areas, subject to the rights of the Association to establish reasonable Rules regulating the use of the Common Areas and any other rights described in the Governing Documents.

2.7 Encroachment Easement. Members agree that minor encroachments of the Common Area on Lots or of Lots on the Common Area or on other Lots are permitted and that valid easements for the encroachments exist. Such minor encroachments are not encumbrances either on the Lots or the Common Area.

ARTICLE 3: MEMBERSHIP OBLIGATIONS

3.1 Obligation to Follow Governing Documents. Members, Tenants and Residents must follow the Association's Governing Documents and ensure that their respective family, guests, and invitees abide by the Governing Documents.

3.2 Security. Neither the Association nor any Officer, Director, Committee member, employee or agent of the Association are insurers or guarantors of any level of security within the Development. Members are responsible for their own security and must take appropriate measures to ensure their own security and that of their family, guests, invitees and Tenants. Members agree not to rely on any security measures provided by the Association. The Association, its Officers, Directors, Committee members, employees and agents are not liable for any loss or damage from failure to provide adequate or effective security measures.

3.3 Purchase Subject to Violations. Buyers take ownership of Lots subject to any violations by prior Members, Tenants or their respective family, guests, invitees, or pets, of the Governing Documents concerning the Lot, whether such violations were disclosed by the seller of the Lot and whether the Association knew of the violations at the time of sale. Such buyers are liable for correcting such violations upon demand by the Association. Assessments, fines, and other charges not secured by a lien on the Lot prior to transfer of title are exempt from this provision.

3.4 Notice of Transfer of Ownership. No later than five (5) days after the assignment, sale, quitclaim or other transfer of their Lots, Members must notify the Association of the name, address, phone number, and email address of the transferee and the nature of the transfer.

3.5 Duty to Maintain, Repair and Replace. Except for those duties specifically assigned to the Association by these CC&Rs, Members must, at their sole expense, maintain and repair their Lots, and maintain, repair and replace Improvements to their Lots. Members' obligations include, without limitation, the following:

- a. Utility Lines. All Utility Lines that exclusively service the Lot.

- b. Sidewalk and Street Encroachments. Members must ensure that no tree, shrub or planting of any kind be allowed to protrude from their Lot onto a sidewalk or street. Trees which overhang a pedestrian walkway or street must be kept free of limbs from the walkway or street to a height of ten (10) feet above the walkway or street.
- c. Fences. Unless otherwise agreed to by the affected Members, Members who have fences separating their Lots, which the Association is not required to maintain, repair or replace, are (1) equally entitled to use and enjoy the fences yet (2) maintenance, repair and replacement of which is the responsibility of the Owner who installed the fence. Notwithstanding the foregoing, if fences are damaged due to the negligence or willful misconduct of a Member, Member's Tenant, or their respective family, guests, invitees or pets, the responsible Member must bear the full expense of any necessary repair or replacement.

3.6 Easement for Maintenance. Each Member has easements across Lots and Common Areas as may be necessary for installing, maintaining, repairing, or replacing Utility Lines which cannot reasonably be serviced from their Lots. Access to Lots and Common Areas is limited to a reasonable work area and for a reasonable time. Except in emergencies, reasonable notice and consent to perform such work, which may not be unreasonably withheld, must be obtained from the affected Lot Owner and/or the Association, as applicable. Immediately after the work is completed, Members must restore affected Lots and/or the Common Areas to the same or better condition than they were in prior to the commencement of such work. Such restoration work on affected Lots and Common Areas must be done promptly at the sole expense of the Member performing the installation, repair, or maintenance work.

3.7 Liability for Damage.

- a. Liability for Damage by Members. Members are liable for any and all damage to the Lots and Common Areas, and any personal property negligently caused by the Member, Member's Tenant, Occupants, or their respective family, guests, invitees, vendors, or animals.
- b. Repair of Damage. The Association and all Members must repair, restore, remediate or replace any damaged portion of the Development as required by these CC&Rs. However, the Association may impose a Reimbursement Special Assessment against any liable Member for all costs, incurred by the Association in connection with any such repairs, restoration or replacement. The Reimbursement Special Assessment may become a lien against the liable Member's Separate Interest enforceable by the sale of the Member's Lot under Civil Code sections 2924, 2924b, and 2924c.

3.8 Correction of Violations. Following notice and a hearing and a finding by the Association of a violation of the Governing Documents, the Association will have the right, but not the duty, to correct or cause to be corrected the violation, including entering a Lot with the permission of a Member owning the Lot, which permission will not be unreasonably withheld.

All expenses incurred by the Association to correct the violation will be recovered from the Members owning the Lot as a Reimbursement Assessment following notice and a hearing. If permission for entry into the Lot is not granted, the Association may enforce the violation by any other means allowed by the Governing Documents or the law.

3.9 Reimbursement to Association. If the Association provides materials or services that benefit a particular Member, such Member must reimburse the Association for the costs the Association incurred. If not, the Association may impose a Reimbursement Special Assessment against the Member in the amount of such costs.

3.10 Tenants and Guests. Each Member is liable to all other Members and the Association for the conduct, behavior, and violations of Tenants and for Persons visiting the Member or Member's Tenant in the Development.

ARTICLE 4: DUTIES OF THE ASSOCIATION

4.1 Board of Directors. The management, maintenance and care of the Common Areas, management of the Association, enforcement of the Governing Documents, and all other acts of the Association are performed by its Board of Directors, unless provided otherwise in the Governing Documents.

- a. Membership Meetings. The Association must have at least one (1) meeting of its Members each year, as provided for in the Bylaws. Annual and Special Meetings of the membership must be held at the dates, times, and locations provided for in the Bylaws.
- b. Director Qualifications and Meetings. The qualifications of Directors and candidates to be elected to the Board are provided for in the Bylaws. Meetings of the Board must be held as provided for in the Bylaws and as required by law.

4.2 Powers of a Nonprofit Corporation. The Association has all of the powers of a nonprofit mutual-benefit corporation organized under the laws of the State of California, operating for the benefit of its Members as provided for in Corporations Code §7140.

4.3 Maintain Common Areas. Unless otherwise provided in these CC&Rs, the Association must maintain, repair, and replace the Common Areas, including, but not limited to:

- a. Common Area Alleys, Driveways, and Walkways. The Association must maintain, repair, and replace all Common Area alleys, driveways, and walkways throughout the Development.
- b. Common Area Fences and Walls. The Association must maintain, repair, and replace all Common Area fences and walls. Members must keep those portions of their Lots under and around fences and walls in a clean and neat condition, including the removal of all weeds. Members must remove other

vegetation and materials from around the fences and walls when so requested by the Association.

- c. Buildings and Equipment. All portions of buildings and equipment owned by the Association must be maintained and repaired by the Association. The Association may discontinue the use of or dispose of equipment or Association buildings as it deems appropriate.

4.4 Termites and Pests.

- a. Association Rights and Obligations. The Association may exercise any rights and authority provided for in the Davis-Stirling Act. In addition, the Association has the authority and duty to do the following:
 - i. Treat, repair and/or replace, at its own cost, Common Areas, and any other areas which the Association must maintain, repair or replace, infested or damaged by insects, rodents, and wood-destroying pests or organisms (including microorganisms);
 - ii. Impose a Special Assessment against the membership for the cost of the treatment and/or repairs; and
- b. Member Obligations. Each Member is obligated to do the following with respect to the Member's Lot and Residence:
 - i. Treat, at Member's expense, the portions of Member's Lot and Residence infested or damaged by wood-destroying pests or organisms (including microorganisms);
 - ii. Treat Member Lot and Residence infested by insects (such as ants, cockroaches, silverfish, etc., other than wood-destroying pests) and rodents.
 - iii. Repair and replace, at Member's expense, any damage to Member's Lot and Residence caused by the presence of wood-destroying pests or organisms (including microorganisms), other insects and rodents.
 - iv. Comply with all legal requirements necessary to effect any fumigation by tenting requested by any fumigator, including the execution of any paperwork mandated by law.

4.5 Incur and Pay Expenses. The Association is empowered to incur and pay the operational expenses of the Association, which include, but are not limited to, legal and accounting services; utilities; insurance; management services; vendor services, such as security, landscaping, pest control, cleaning, painting, pavement repair and maintenance, and other such services; maintenance, repair, reconstruction, and replacement of all or any portion of the Common Areas or the personal property acquired by the Association; supplies and materials; and

such other services for the use, enjoyment and protection of the Development and its Residents as the Board may determine from time to time are reasonable, proper, or desirable.

4.6 Rules and Regulations. The Board may adopt, amend, and repeal Rules and Regulations regarding any matter set forth in the Governing Documents, including, but not limited to: (i) the use, occupancy, and maintenance of the Development; (ii) the general health, welfare, peace, comfort, safety and security of Residents in the Development; and (iii) the interpretation and implementation of the Governing Documents.

4.7 Foreclose, Hold Title and Make Conveyances. The Association is authorized to lien and foreclose upon any Lot for non-payment of Assessments, to take title to the Lot, to assume or otherwise pay off encumbrances, and to acquire, hold title to, lease and convey, with or without consideration, real and personal property and interests.

4.8 Fee Limitation. The Association may not impose fees that exceed the amount necessary to defray the costs for which the fee is levied.

4.9 Granting Utility Easements. The Board is authorized to grant easements and rights of way in, under, or through the Common Areas for constructing, erecting, operating, maintaining, repairing, and replacing utilities and similar services.

4.10 Limitation on Granting Easements. Granting any Member an easement for exclusive use of any portion of the Common Areas requires Approval of the Membership except if the easement is for any of the reasons for which Member Approval is not required, as stated in the Davis-Stirling Act at Civil Code section 4600.

4.11 Borrow Money. The Association may borrow and repay monies, as needed to discharge its duties, and pledge or assign Special Assessment rights, as security for repayment of such borrowed money. Except for emergencies, the aggregate total of all loans made by the Association in a given fiscal year may not exceed five percent (5%) of the budgeted gross expenses for the same fiscal year, without Membership Approval.

4.12 No Power to Encumber Real Property. The Common Area of the Association may not be encumbered as a security for debt.

4.13 Represent Association in Litigation. The Association, by its Board, may institute, defend, settle, or intervene in litigation, arbitration, mediation, administrative proceedings, or any other legal proceeding in any capacity necessary to represent the interests of the Association.

4.14 Receive and Dispose of Property. Subject to the Section of these CC&Rs entitled "Limitation on Transfer of Real Property", the Association may acquire, hold, lease, encumber, convey, or otherwise dispose of real and personal property and to take real and personal property by will, gift, bequest or any other legal transfer. Any funds or property so received must be used consistently with the purposes for which the Association was formed.

4.15 Limitations on Transfer of Real Property. The Board may exchange, sell, dedicate, or otherwise transfer real property, including Common Area, owned by the Association

only if approval by a majority of the Voting Power of the Association is first obtained, except for the sale or other transfer of property acquired by the Association in foreclosure proceedings which sale or other transfer may not require prior Member approval.

4.16 Delegation to Manager. The Board may delegate any of its duties, powers, or functions to any qualified Person or management company to act as Manager, except (i) attending Board meetings and voting on motions; (ii) electing officers; (iii) filling vacancies on the Board; (iv) appointment of executive committees; and (v) approving settlement agreements. Notwithstanding any delegation of duties, however, the Manager's actions are subject to the direction and supervision of the Board.

4.17 Nonprofit Character of Association. Notwithstanding anything contained in these CC&Rs to the contrary, the Association may not engage in any activity which may jeopardize the nonprofit character of the Association.

4.18 Discharge of Liens. When necessary, the Association is empowered to discharge, by payment, any lien against the Common Area and assess the cost thereof to the Member or Members responsible for the existence of the lien. Prior to any Board decision to discharge a lien, the Member or Members responsible for the existence of the lien must be given written notice and an opportunity to be heard by the Board and present any defenses which may exist.

ARTICLE 5: ARCHITECTURAL CONTROL

5.1 No Improvements or Alterations Without Approval. No Renovations by or on behalf of a Member which alter the exterior appearance of any Lot, its Improvements, or Common Area are permitted until plans and specifications have been submitted to and approved in writing by the Architectural Committee or Board. Any Renovations which are unapproved, different from those approved by the Committee, or done without required governmental permits, are automatically deemed disapproved and the Member must promptly remove or correct the disapproved Renovations to comply with the Architectural Standards, the Architectural Committee's or Board's approvals, and governmental requirements.

5.2 Applicants in Good Standing. Only Members in Good Standing may submit requests for architectural approval of Renovations to their Lots, Exclusive Use Common Areas, or Common Areas appurtenant to their Lots. A Member is in Good Standing for the purposes of this Article, unless found by the Board, at a properly noticed hearing, (1) to be delinquent in the payment of any Assessment, fee, or fine, by more than sixty (60) days, and/or (2) to be otherwise in violation of the Association's Governing Documents.

5.3 Frontage and Setback Limitations. Any structure or building erected or constructed upon a Lot shall be so erected or constructed as to not come nearer to the front street line than a distance of one-tenth of the depth of the Lot and not to come nearer to the side street line than a distance of one-tenth of the width of the Lot, nor shall any garage or other building be built or constructed in front of or nearer to the front or side street line of the said Lot than the front or side line of the building, nor shall any line or division fence be built or constructed from the front line of the building to the front street line or on the said front street line, and the portion of said premises in front of the front line occupied by the building thereon shall be kept free from

rubbish, litter, and weeds, and properly cultivated to grow and maintain plants, flowers, shrubs, or a lawn.

5.4 Architectural Standards. The Board is authorized to adopt, amend, and repeal Architectural Standards. These Architectural Standards interpret and implement the provisions of these CC&Rs by setting forth the standards and procedures for the review and approval of proposed Renovations, ~~guidelines or requirements for architectural design, placement of any Renovation, color schemes, exterior finishes and materials, and similar features which are recommended or required for use within the Development~~, provided that the Architectural Standards meet any minimum standards required by these CC&Rs. If any conflict exists between the Architectural Standards and these CC&Rs, the CC&Rs prevail.

5.5 Architectural Committee. The Board is authorized to appoint an Architectural Committee. If the Board does not appoint one, the Board is automatically deemed to be the Architectural Committee. The Architectural Committee has the authority to approve, reject, modify, give conditional approvals, and give limited approvals of improvements and alterations as provided for in the Association's Architectural Standards.

~~a. Architect. The Board is authorized to retain the services of an architect and one or more consultants to assist the Architectural Committee in its duties. Compensation for consultants' services must be determined by the Board. The cost of such consultants and any related expenses may be charged to those Members submitting plans for Renovations as a Reimbursement Special Assessment. Any significant costs for which the Member will be responsible must be submitted to the Member for approval before being incurred by the Association.~~

~~b.a.~~ Conflicts of Interest. A Director or Architectural Committee member is not permitted to participate in the decision-making process of any architectural submittal made by that Director or Architectural Committee member, or members of their family, or submittals by an adjacent neighbor. Further, a Director or Architectural Committee member is not permitted to participate in the decision-making process of any other architectural submittal if the approval would result in a monetary benefit to the Director or Architectural Committee member or any company in which the Director or Architectural Committee member or members of their family have a financial interest.

5.6 Submission of Plans, Drawings, and Specifications.

- a. Plans, drawings, and specifications in accordance with the Association's Governing Documents, describing the proposed Renovations, must be submitted to the Architectural Committee by personal delivery, certified mail, or email.
- b. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Architectural Committee and/or the Board within forty-five (45) days from the date of submission of a complete application. If the

Architectural Committee and/or the Board fails to act on a request for approval within forty-five (45) days from the date of submission of a complete application, the Member shall be entitled to request internal dispute resolution, as described in Civil Code sections 5900 et seq.; except that, in the case of an application for installation or use of a solar energy system subject to Civil Code section 714, any application that is not denied by the Architectural Committee and/or the Board within forty-five (45) days from receipt of a complete application shall be deemed approved; and in the case of an application for installation or use of an electric vehicle charging station subject to Civil Code section 4745, any application that is not denied by the Board within sixty (60) days from receipt of a complete application shall be deemed approved.

- c. Applications shall not be approved by any individual Architectural Committee member or Director. In the event an individual Architectural Committee member or Director approves architectural plans and specifications, such approval should not be relied upon and shall not be deemed approval.
- d. The Architectural Committee is authorized to impose any reasonable conditions of approving an architectural application, in writing, including, but not limited to, (1) requiring modifications of particular aspects of the Member's architectural submission and/or (2) requiring the preparation, execution and recording, at the Member's expense, of a covenant establishing maintenance, repair and replacement, indemnity, and other obligations binding current and future Members owning the Lot.
- e. Applications that are disapproved must be in writing and must explain why the proposed Renovation is disapproved. The Member is permitted to seek reconsideration of a disapproved application, in writing, by the Board, unless (1) the original disapproval was made by the Board or a body that has the same membership as the Board at a meeting that satisfied the requirements of the Open Meeting Act or (2) as to any Renovations that were disallowed because they would violate the Association's Governing Documents, any Building, Safety and Fire Codes, or any other laws. A permissible written request for reconsideration must be received by the Board not more than forty-five (45) days after the denial. Within forty-five (45) days after receipt of the request for reconsideration, the Board must hold an open meeting to consider the reconsideration and decide. Failure of the Board to decide within the forty-five (45) day period is deemed a decision in favor of the Member.
- f. Once an application has been approved, material modifications to the approved plans and specifications thereof are not permitted and any subsequent alterations, relocations, additions or modifications require a separate application, review and approval. If a proposed material modification is likely to materially affect other aspects or components of the work, the Board, in its discretion, may order the Member and their contractors and

agents to cease working on both the modified component of the Improvement and any other affected component.

- g. Unless a shorter period is specified in the approval, Renovations approved by the Architectural Committee must be completed within one (1) year of the Member receiving approval. ~~Renovations not completed within one (1) year must be resubmitted for approval. The Architectural Committee, in its discretion, may grant short extensions for Renovations to be completed.~~ Reasonable extensions of time to complete the Renovations shall be granted.

5.7 Rescinding Approval. The Architectural Committee and/or the Board is authorized to rescind previously approved plans but only for good cause.

5.8 Failure to Comply with Approval Requirements. Any Renovations, whether in progress or completed, which (1) were not approved by the Architectural Committee or Board when such approval is required by the Governing Documents, (2) violate the Architectural Committee's or Board's conditions of approval, the Association's Governing Documents, or any Building, Safety and Fire Codes, or other laws, or (3) were performed by an unlicensed contractor (where a licensed contractor was required by law, the Governing Documents, or the Architectural Committee's conditions of approval), are automatically deemed disapproved and in violation of the Governing Documents.

5.9 Review Fees and Remodeling Agreement. The Board is authorized to establish a schedule of fees to be charged to an applicant to reimburse the Association for any out-of-pocket expenses it may incur in connection with the approval of an application, including architectural and/or engineering consultant fees, attorneys' fees for the preparation of recordable covenants or easements, or other documents uniquely necessary for compliance with reasonable conditions of approval, and expert expenses for reviewing plans. ~~In addition, the Board is authorized to adopt and require Members to sign a remodeling agreement.~~

5.10 Variances. The Architectural Committee is permitted to recommend reasonable architectural variances, subject to advanced written Board approval. The Board may grant the variance if it determines the variance will not (i) constitute a material deviation from the overall plan and scheme of the Development, (ii) result in a material detriment to the Association or any Member, or (iii) create a nuisance in the Common Area or affecting any other Member. The granting of a variance by the Board is not a variance or waiver as to any other Lot, nor does any variance affect the applicability or enforceability of any provision of this Article in respect to any other Lot.

5.11 Engineering and Code Requirements. Plans and specifications approved by the Architectural Committee or Board are not approved for engineering design, Building, Safety or Fire codes, or other safety specifications. Approval by the Architectural Committee or Board does not absolve Members of the responsibility of obtaining any necessary governmental approvals or permits. Members must ensure compliance with applicable Building, Safety and Fire codes, ordinances, and specifications.

5.12 Inspection. The Association has the right, but not the obligation, to periodically inspect any work approved by the Architectural Committee or Board. Members must allow inspection. Any work in progress may be halted and the Member will be subject to a fine if (1) an inspection is not allowed, or (2) the Renovations are in violation of the Governing Documents as provided in the Section above entitled “Failure to Comply with Approval Requirements” or elsewhere. Such inspections do not absolve Members from compliance with the Association’s Architectural Standards and all applicable Building, Safety and Fire codes.

5.13 Building Department and Association Approvals. Any construction, repair, modification, or alteration of any Improvement requiring the issuance of a building permit must be submitted by the Member to the appropriate governmental entity for review and approval. The Architectural Committee may impose conditions of approval which are more restrictive than conditions imposed by governmental agencies. If the conditions of approval imposed by the governmental entity and the Architectural Committee conflict, the more restrictive conditions control.

5.14 Mechanics’ Liens. Members must ensure that no lien is placed against any other Lot, or against the Common Areas, for labor or material furnished to their Lots. If a lien is placed against the Common Areas and/or another Member’s Lot, and the responsible Member does not immediately cause the removal of the lien, the Association may, after written notice to the responsible Member, pay the amounts necessary to have the lien removed and levy a Reimbursement Special Assessment against the responsible Member for the monies advanced and any fees and costs incurred by the Association.

5.15 Hold Harmless and Indemnify. ~~Limitation of Liability~~. Approval of plans by the Association signifies only a general conformance with its Architectural Standards and not with Building, Safety, or Fire code compliance, lot lines, easements, or best construction practices. The Association and its Architectural Committee, Members, Officers, Directors, employees, and agents are not liable ~~and must be held harmless, defended and indemnified~~ for mistakes in judgment or negligence arising out of or in connection with the Association’s approval or disapproval of plans.

5.16 Combining Lots. The combining of Lots is not permitted without prior written Board approval. Once combined: (i) the Percentage Interest in the Common Area allotted to the combined Lots will equal the sum of the Percentage Interests in the Common Area of each of the combined Lots; (ii) the Assessments due and owing on the combined Lots will equal the sum of the Assessments levied against each of the respective Lots so combined; and (iii) the Owner of the combined Lots will continue to have the same number of votes assigned to the Lots before they were combined.

5.17 No Right to Divide Lots. No Member is permitted to divide any Lot; provided, however, that once two or more Lots have been combined, the Members owning such combined Lots are permitted to restore them to their original dimensions and footprint only after receiving prior written Board approval.

5.18 Square Footage and Setbacks. The minimum and maximum square footage of structures and their setback requirements from lot lines must comply with Section 5.3 above, the Association's Architectural Guidelines and any governmental requirements.

5.19 Occupancy of Unfinished, Temporary, or Mobile Structures Prohibited. No trailer, RV, bus, mobile home, tent, shack, garage, temporary building or structure of any kind is permitted to be occupied or lived in at any time. Permanent residential dwellings must not be occupied or lived in until they have been completed and the exterior is made to comply with the Association's Architectural Standards and any required governmental occupancy permit has been issued.

~~5.20 Diligent Construction. The construction of any building or structure must be prosecuted diligently and continuously from the time of commencement until fully completed, and all structures, once the foundations are erected, must be completed in eighteen (18) months.~~

~~5.21~~5.20 Drainage. Any changes to the established drainage patterns over a Lot (i) must comply with applicable Building Codes (ii) must not adversely affect the property of others, and (iii) must be approved in writing by the Architectural Committee in advance of any changes.

~~5.22~~5.21 Removal of Temporary Buildings. Temporary buildings or structures used during construction or remodeling must be removed immediately after the completion of construction.

~~5.23~~5.22 Landscaping Following Construction. Within two (2) months of the completion of any construction work during which the Association's landscaping requirements were waived, or within any shorter time frame required by the Architectural Committee, Members must landscape their Lots as required by the Association's Architectural Standards and/or any conditional approvals of the Architectural Committee.

~~5.24~~5.23 Waiver of Liability. Neither the Architectural Committee or its members nor the Association or its Officers, Directors, employees or agents are liable for any damage, loss or prejudice suffered or claimed on account of the Architectural Committee's review, approval, or disapproval of any plans, drawings or specifications, or the conformance of the construction with the approved plans and any such claims are expressly waived.

ARTICLE 6: USE RESTRICTIONS

6.1 Drains. Members are not permitted to interfere with established drainage patterns in the Development unless an alternative provision is made and approved in advance in writing by the Architectural Committee.

6.2 Flammable Materials. Except for reasonable amounts of legal ammunition for use with legal firearms, the storage or use of explosives, fireworks, or highly flammable or highly corrosive materials by Members, Tenants, Residents, or their respective family, guests, or invitees anywhere in the Development is prohibited. Nominal amounts of gasoline to power yard maintenance devices is permitted.

6.3 Health/Safety Hazards. Members must not permit conditions which constitute a health, safety, or fire hazard to exist on their Lots.

6.4 Nuisance. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable disturbance or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Lots. ~~Without limited any of the foregoing, no Resident shall permit noise, including but not limited to barking dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of their Lot or the Common Area.~~

6.5 Obstruction of Common Areas. Obstruction or misuse of the Common Area, for other than its intended purpose, is prohibited, unless expressly permitted in writing by the Board for good cause.

6.6 Residential Use. Using a Lot, or permitting a Lot or any portion of it, to be occupied or used for any purpose other than a private residential dwelling is prohibited. Lots must not be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, ~~Residents may use a room in their a dwelling and Lot may be used as a home combined residence and executive office, provided that (1) by the primary use of the Lot remains as a Residence, (2) no business advertising owner or signage is used in connection occupant thereof, so long as such use does not interfere with the quiet enjoyment by the owners or occupants of other Lots and such home office use, (3) package deliveries are kept to a minimum, and (4) no customers, does not include visiting clients or patients visit the Lot. The Board may adopt additional Rules regarding the use of such home offices. any signage.~~

6.7 Sanitary Conditions. Members must maintain and repair their Lots and all Improvements thereon in a clean and sanitary condition and not allow rubbish or debris of any kind to accumulate causing any Lot or portion of a Lot to become unsanitary, unsightly, or offensive.

6.8 Solar Energy Systems. Solar Energy Systems may only be installed after obtaining written approval of the Architectural Committee and as provided for in the Rules and Regulations, Architectural Standards, and applicable law.

6.9 Storage. No Lot is permitted to be used at any time for open air storage of building materials, vehicles, implements, tools, furniture, landscaping materials or equipment, irrigation pipes or apparatus, junk, trash or any other things whatsoever; provided, however, that building and landscaping materials, tools or equipment may be placed and maintained on construction sites as provided for in the Architectural Standards.

6.10 Tanks and Receptacles. Installation of any tank for the storage of fuel outside any structure on a Lot is subject to advanced written approval of the Architectural Committee. Such tanks must be either buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Architectural Committee.

ARTICLE 7: ENFORCEMENT OF GOVERNING DOCUMENTS

7.1 Association Enforcement Rights. In addition to any other rights described in these CC&Rs and without waiving the Association's right to institute any other enforcement measures, and subject to the notice and hearing provisions in the Bylaws and as required by law, the Association is authorized to enforce the Governing Documents by any of the following means:

- a. Monetary Penalties (Fines). The Board is authorized to assess reasonable monetary penalties (fines) for violations of the Association's Governing Documents by a Member, Member's Tenants or their respective family, invitees or guests. A monetary penalty (fine) imposed by the Association as a disciplinary measure for failure of a Member to comply with the governing documents, is hereby treated and deemed to be an Assessment that may become a lien against the Member's separate interest, but such lien may not be enforced by the sale of the interest under Sections 2924, 2924b, and 2924c (non-judicial foreclosure). As Assessments, Members are liable for all costs of collection, including reasonable attorneys' fees, court costs, and related expenses for delinquent monetary penalties (fines).
- b. Dispute Resolution. As to any dispute between a Member and the Association, the Association is authorized to engage in Internal Dispute Resolution and/or Alternative Dispute Resolution as provided for in the Governing Documents and the law.
- c. Judicial Enforcement. A lawsuit may be filed for damages, declaratory relief, injunctive relief (whether the relief sought is mandatory or prohibitory) and/or such other relief permitted by law.

7.2 Cumulative Remedies. The respective rights and remedies, provided by the Governing Documents, under the law, or available in equity, are cumulative and the exercise of any one or more of such rights or remedies does not preclude or affect the exercise, at the same or at different times, of any other such rights or for the same or different failures of the Members or others to perform or observe any provision of the Governing Documents.

7.3 Failure to Enforce Not a Waiver. Failure to enforce the Governing Documents, whether by the Board or any Member or other Person entitled to enforce them, is not deemed a waiver of the right to do so. Waiver or attempted waiver of any provision of the Governing Documents with respect to a given Lot is not deemed a waiver of such right as to any other Lot. Additionally, violation of any provision of the Governing Documents by the Members owning any Lot or Lots does not affect the applicability or enforceability of any provision of the Governing Documents against the Members owning any other Lot.

7.4 Remedy at Law Inadequate. If remedies at law for violation of the Association's Governing Documents are inadequate, then equitable, declaratory, and/or injunctive relief may be sought and awarded.

7.5 Right of Action Against Buyer. If a Member fails to correct architectural, nuisance, or other continuous violations concerning the Member's Lot prior to the transfer of title to the Lot to a buyer, the Association retains the right to enforce compliance against the buyer for such violations.

7.6 Attorneys' Fees. If any party initiates any action or proceeding to enforce or interpret the Governing Documents or California law relating to the Development, the prevailing party is entitled to recover reasonable attorneys' fees and court costs, including reasonable expert fees, as permitted by law.

ARTICLE 8: ASSESSMENTS

8.1 Purpose of Assessments. The general purpose of Assessments is to provide for the recreation, health, safety, and welfare of the Members, enforce and comply with the Governing Documents, manage the Development, enhance the quality of life in the Association, improve, maintain, repair, and replace Common Areas and Exclusive Use Common Areas, provide for the acquisition and maintenance of property, services and facilities devoted to these purposes, and for any action or undertaking on behalf of the Association.

8.2 Regular Assessment. The Board must levy Regular Assessments in an amount sufficient to provide for the performance by the Board of each and every one of its powers and duties provided, however:

- a. 20% Limitation. Pursuant to the Davis-Stirling Act, the Board is not permitted, without the approval of Members casting a majority of the votes with a Quorum present, to impose a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year. Quorum for the purposes of this provision means more than fifty percent (50%) of the Members of the Association.
- b. Assessment Allocation. Regular Assessments must be levied in accordance with the Assessment Schedule in Exhibit "A."
- c. Payable Annually. Regular Assessments are payable by each Member against whom assessed on January 1 of each year or at such other dates and in such other installments as the Board determines.
- d. Written Notice. Individual notice under Civil Code §4040 of any increase in Regular Assessments must be given to each Member not less than thirty (30) days nor more than sixty (60) days prior to the increased Assessment becoming due.
- e. Modification of Assessment. The Board may modify the Regular Assessments during the course of a fiscal year if necessary to conform to a revised estimate of costs and expenses. However, if the aggregate increase exceeds twenty percent (20%) of the Regular Assessment for the immediately preceding fiscal year, the Board must obtain the approval of Members as provided for in the

Davis-Stirling Act. If an annual Regular Assessment is not published for a new fiscal year, the Regular Assessment for the prior fiscal year will apply and govern each Member's payments until changed by a new Regular Assessment.

8.3 Special Assessment. In addition to the Regular Assessment, the Board may levy a Special Assessment for any purpose necessary for the Association to carry out its duties; provided, however:

- a. 5% Limitation. Pursuant to the Davis-Stirling Act, the Board is not permitted, without the approval of Members casting a majority of the votes with Quorum present, to impose a Special Assessment which is more than five percent (5%) of the budgeted gross expenses of the Association for such fiscal year. Quorum for purposes of this provision means more than fifty percent (50%) of the Members of the Association.
- b. Rate of Assessment. Special Assessments must be levied in accordance with the Assessment schedule contained in Exhibit "A."
- c. Reimbursement Assessments. Special Assessments are also permitted to be levied against individual Lots for reimbursement of expenses incurred by the Association arising out of actions or omissions of such Member, Member's Tenant, or their respective family, guests, invitees or pets, as expressly provided for elsewhere in these CC&Rs.
- d. Payment Schedule. Special Assessments are payable by each Member against whom assessed at such dates and in such installments as the Board determines.
- e. Written Notice. Written notice of Special Assessments must be sent by first-class mail to each Member not less than thirty (30) days nor more than sixty (60) days prior to the Assessment becoming due.

8.4 Emergency Assessment. In emergency situations, the Board may increase Regular Assessments beyond twenty percent (20%) or impose Special Assessments above five percent (5%) only as provided for by law.

8.5 Deposit of Assessments. All sums received by the Association must be promptly deposited into accounts clearly designated in the Association's name.

- a. Commingling. The Association must maintain separate accounts for its operating funds and its Reserves, respectively, and no funds from those separate accounts are permitted to be commingled at any time.
- b. Interest. No Member has the right to receive interest on any such funds deposited.

8.6 Reserves. All Reserves, must:

- a. Be Segregated. Be received in trust by the Board, set aside and segregated from the other monies and not be commingled with the Association's Operating Account.
- b. Be Invested. Be invested in low-risk investments consistent with the requirements of Civil Code §5380. Reserves must be deposited in a financial institution, as defined in the Financial Code §31041, in California, which is insured by the federal government, the Federal Deposit Insurance Corporation, the National Credit Union Administration Insurance Fund, or a guaranty corporation subject to the Financial Code §14858 and only into accounts that protect the principal. In no event may reserve funds be invested in stocks or high-risk options.
- c. Require Two Signatures. Be withdrawn from the Reserve account only upon approval by the Board and the signature of two (2) Directors.
- d. Not Be Reimbursed. Not be reimbursed to Members. All contributions to the Reserves, as well as interest earned, are for the benefit of the Association and not to the benefit of any individual Member. As such, contributions and interest are not refundable to Members when they cease to be Members of the Association.

ARTICLE 9: ENFORCEMENT OF ASSESSMENTS

9.1 Liability for Assessments. Assessments, together with charges, interest, costs, and attorneys' fees (regardless of whether legal proceedings are instituted), are a debt of each owner of a separate interest at the time the Assessment or other sums are levied. Co-owners and/or Members owning a full or partial interest in a Lot are jointly and severally liable for the entire amount of all Assessments, late charges, interest, reasonable costs of collection, reasonable attorneys' fees, and monetary penalties.

9.2 Enforcement Rights. In addition to any other rights provided for by law or described in these CC&Rs, the Board has the right to collect delinquent Assessments as follows:

- a. Late Fees and Interest. Unpaid Assessments are deemed delinquent fifteen (15) days after they are due and are subject to a late charge of the greater of either ten percent (10%) or ten dollars (\$10.00), which may not be imposed more than once on any delinquent payment, and interest at the rate of twelve percent (12%) per annum, which may commence thirty (30) days after the Assessment becomes due.
- b. File Suit. The Association is authorized to commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien and initiate foreclosure against the Member's Lot for the delinquent Assessment. In any action to collect delinquent Assessments, late charges and/or interest, the

prevailing party is entitled to costs and reasonable attorneys' fees. All amounts included in any judgment may become the subject of a judgment lien in any county in California in which an abstract of judgment is recorded.

- c. Lien and Foreclose. In accordance with the Davis-Stirling Act, a delinquent Assessment or installment, together with any late charges, interest, costs, attorneys' fees, and penalties, will become a lien on the Lot upon the recordation of a "Notice of Delinquent Assessment" in the Office of the County Recorder. The Board is permitted to enforce any Assessment lien against a Lot by filing an action for judicial foreclosure or by nonjudicial foreclosure in the manner provided for in the Davis-Stirling Act. The Association, through its Board, is authorized to bid on the Lot at the sale and may hold, lease, mortgage, and convey the acquired Lot as permitted by law.
- d. Continuing Lien. Any demand or claim of lien or lien on account of prior delinquencies is deemed to include subsequent delinquencies and amounts due on account thereof. It is the intent of these CC&Rs that any lien recorded against a Separate Interest by the Association to secure payment of delinquent Assessments and/or other amounts be a continuing lien to include any and all subsequent Assessments and other amounts as permitted in the Davis-Stirling Act, to the full extent allowed in *Bear Creek Master Ass'n v. Edwards*, (2005) 130 Cal. App. 4th 1470.
- e. Additional Remedies. The remedies provided in this Section are in addition to, not in substitution for, any other rights and remedies which the Association may have.

9.3 No Offsets. All Assessments are payable in the amount specified by the Assessment and no offsets against such amount are permitted for any reason, including, without limitation: (i) a claim that the Association is not properly exercising its duties and powers, as provided in these CC&Rs; (ii) a Member has not made or elects not to make use of the Common Area; (iii) any maintenance, repairs or replacements for which the Association is responsible have not been performed or have not been performed to a Member's satisfaction.

9.4 No Exemption by Waiver of Use. Members are not permitted to exempt themselves from liability for Assessments nor release their Lots from liens and charges by waiver of their use and enjoyment of the Common Areas, by abandonment of their Lots, or through non-use of Common Areas or membership privileges.

9.5 Attorneys' Fees. Any reasonable attorneys' fees and costs incurred by the Association in the collection of Assessments, late fees, and interest against a Member may become a Reimbursement Special Assessment against that Member, which may be collected in any manner provided for by these CC&Rs or by law.

9.6 Non -Waiver of Assessments. If the Board fails to approve a Budget or fix the Assessments for the current year, the Budget and Assessments from the preceding year continue until a new Budget is approved and new Assessments are fixed.

ARTICLE 10: INSURANCE

10.1 Association Insurance. The Association must obtain and maintain policies of insurance as described below. To help keep premiums at a reasonable level, the Association is authorized to establish appropriate deductibles for its policies of insurance. Unless otherwise determined by the Board, coverage must be on an occurrence basis.

- a. Commercial General Liability (“CGL”). The Association must maintain one or more CGL policies which provide appropriate liability limits for injury or death to one or more Persons in any one accident or occurrence. The Association must carry coverage in amounts that meet or exceed those called for in Civil Code §5805 and any successor statutes.
- b. Direct Physical Loss. The Association must maintain one or more policies for loss or damage by fire or other perils covered by the standard “Special Form” policy (or its equivalent) covering all Common Area Improvements in the Development, and such other Improvements in the Development as the Board may deem appropriate. The amount of such insurance must not be less than one hundred percent (100%) of the aggregate full insurable value, meaning replacement cost, not a depreciated amount or actual cash value (ACV), if available. The coverage must be written on a blanket basis with an agreed value endorsement and an inflation guard endorsement, if available. The Association’s insurance policy must be primary with respect to property damage in the event of overlapping coverage with a Member’s property damage policy. Because construction costs can be unpredictable and suddenly escalate whenever large losses occur, Directors are not liable if actual construction costs are greater than the 100% replacement cost provided by the insurance policy. In addition, if available, the Association must include the following:
 1. “Ordinance or Law Coverage” or its equivalent, including:
 - (a) Coverage for Loss to the Undamaged Portion of the building or structure.
 - (b) Demolition Cost Coverage.
 - (c) Increased Cost of Construction Coverage.
 2. “Maintenance Fees Receivable” coverage, or its equivalent, to cover the loss from unpaid or uncollected Assessments resulting from a covered property loss.
 3. Such other endorsements which the Board may deem necessary or reasonable.
- c. Directors and Officers. The Association must purchase Directors and Officers errors and omission insurance insuring the Association, Directors, Officers,

Committee members, trustees, Association employees, Association volunteers, any community manager in contract with the Association, any management company in contract with the Association and employees of such Association management company who perform services on behalf of the Association. The Association must carry coverage in amounts that meet or exceed those called for in Civil Code §5800 and any successor statutes.

- d. Crime Insurance and Fidelity Bond. The Association must maintain crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the Association and total Assessments for three months. The coverage maintained by the Association shall also include protection in an equal amount against computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the Association's crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, shall additionally include coverage for, or otherwise be endorsed to provide coverage for, dishonest acts by that Person or entity and its employees. Self-insurance does not meet the requirements of this Section.
- e. Flood Insurance. When required by any first mortgage holder, Fannie Mae, Freddie Mac, or the Fair Housing Administration (FHA), the Association must purchase flood insurance on any portion of the premises that Federal Emergency Management Agency (FEMA) determines to be in a Special Flood Hazard Area (SFHA). Otherwise, the Association may purchase flood insurance, after considering the cost and availability.
- f. Earthquake Insurance. The Association may, but is not obligated to, purchase earthquake insurance, after considering the cost and availability.
- g. Umbrella Policy. The Association may purchase an excess or umbrella policy over its public liability and property damage, Directors and Officers liability, and workers' compensation policies to provide higher liability limits as the Board determines.
- h. Workers' Compensation. The Association must carry workers' compensation insurance as required by law to cover employees of the association. If available, the Association must also purchase a Voluntary Labor Endorsement to protect its volunteers.

10.2 Member Insurance. Members are solely responsible to purchase and maintain insurance, at their sole discretion, covering their real and personal property whether the Lot and Residence is owner occupied, vacant, or held out for rent. This includes, without limitation: (i) personal property coverage that insures the contents of their Lot and/or Residence against damage or loss; (ii) real property coverage that insures their Lot and/or Residence against damage or loss, including, but not limited to, all improvements to the Lot and/or Residence and all fixtures and components within or appurtenant to the Lot and/or Residence; (iii) real property

coverage that insures Exclusive Use Common Area, if any, servicing the Lot and/or Residence; (iv) premises liability that includes protection for bodily injury and property damage; (v) personal liability coverage, (vi) loss of use that protects a Member for additional living expenses, loss of rents, or any other losses should their Lot become uninhabitable due to a covered loss; (vii) loss Assessment coverage that protects against Special Assessments due to a loss which exceeds the Association's master policy limits or deductible, (viii) master policy deductible coverage, and (ix) such other coverage as the Member deems appropriate. In addition, if a Member operates a vehicle which is driven across or stored in the Association's Common Areas, the Member must carry appropriate automobile insurance. The Association has no obligation to purchase the insurance listed in this Section 10.2 on behalf of any Member, nor is the Association responsible to insure the Lots and/or Residences.

10.3 Responsibility for Deductible and Uncovered Losses.

- a. Intentional or Negligent Acts. If any Common Area property is damaged as a result of the intentional or negligent acts or omissions of any Member, Member's Tenant, or their respective family, guests, invitees, vendors, or pets and a claim is tendered to the Association's insurance carrier, the Member will be solely responsible for paying any portion of the claim not paid due to the deductible.
- b. Non-Negligent, Unintentional Acts. If any property damage loss which results from a failure of any component, element or portion of the Development and did not result from a negligent or intentional act or omission is tendered to the Association's property damage policy, the Association will apportion the deductible of such policy or policies amongst all claimants according to the percentage each claim bears against the total of all claims for the loss when distributing the Association's insurance proceeds to the various claimants.
- c. Uncovered Losses. Apart from deductibles as set forth above, responsibility for any losses for which the Association's property damage policy does not provide coverage will be determined according to the maintenance, repair and/or replacement provisions set forth in these CC&Rs and/or the law.

10.4 Liability for Increased Insurance Rates. If any negligent act or omission of any Member, Member's Tenant, or their respective family, guests, invitees, vendors, or pets causes an increase in the cost of the Association's insurance, the amount of the increase may be assessed against the Member and their Lot as a Reimbursement Special Assessment.

10.5 Choice of Contractor. With respect to any repairs for which proceeds of insurance are paid or are payable to the Association, the Board must designate the contractor to perform the repairs to the Common Areas.

10.6 Insurance Company Rating. All policies of insurance required by this Article must be issued by either a California admitted insurance company or an approved carrier on the California List of Approved Surplus Line Insurers (LASLI). Each such carrier must hold an A.M. Best Insurance or Standard and Poor's rating of "A" or better.

ARTICLE 11: LIMITATIONS OF LIABILITY

11.1 Standard for Liability. Officers, Directors, Committee members, employees, or agents are not responsible to the Association, or any Member, Member's Tenant, or their respective family, guests, or invitees for any loss or damage to the Association, or any Person or property suffered by reason of water, fire, smoke, explosion, electricity, dust, sand, insect or rodent infestation, or any other source, unless there is clear and convincing evidence the damage or loss was caused by the willful, intentional or bad faith misconduct of the Association's Officers, Directors, Committee members, employees, or agents, based upon the information such individual possessed at the time of the purported act or omission. The Association's Officers, Directors, Committee members, employees and agents cannot be held strictly liable for their acts or omissions.

11.2 Limited Personal Liability. No Officer, Director, Committee member, or employee of the Association is personally liable for any loss, injury, or damage to Persons or property for any act or omission, if the act or omission was performed in good faith, within the scope of the Person's duties for the Association, was not self-dealing, and did not constitute willful or intentional misconduct.

11.3 Association Not a Security Provider. The Association is not a provider of security and has no duty to provide any security in the Development. The obligation to provide security lies with each Member individually. The Association cannot be held liable for any harm, loss or damage to Persons or property by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. This includes, but is not limited to, any harm, loss or damage from theft of or damage to any article or thing placed or stored in or on any portion of the Common Area.

11.4 Duty to Defend. The Association must indemnify and defend and must advance reasonable attorneys' fees and costs to its Officers, Directors, Committee members, and employees for all expenses and liabilities reasonably incurred by such Person(s) regarding any proceeding (including, but not limited to, alternative dispute resolution proceedings) to which they are a party by reason of having been an Officer, Director, Committee member, or employee of the Association. However, the Association may seek recovery of its attorneys' fees and costs from, and is not liable for, any judgments or other liabilities for the acts or omissions of, any Persons adjudged to have acted in bad faith or in gross negligence in the performance of their duties to the extent permitted by law.

11.5 Duty to Protect. The Association must protect its Officers, Directors, Committee members, and employees from unlawful harassment in the workplace as such phrase is defined in the law. However, the Association has no duty to prosecute or fund the prosecution of any claim or cause of action which an Officer, Director, Committee member, or employee of the Association asserts against another Officer, Director, Committee member or employee of the Association, or against a Member, which is (1) not based on conduct of the accused performed in the course and scope of their duties (2) founded on personal issues or disputes between the parties, (3) for personal injuries or emotional distress, or (4) for defamation.

~~11.6 — Personal Injury or Property Damage Sustained Within a Lot. This Section applies if any Person sustains personal injury or property damage within a Lot or on its attached Balcony, Patio or Deck and the injury or damage results in a claim against the Association or any of its Officers, Directors, Committee members, Members, agents, or employees. The Owner of the Lot, Patio, or Balcony where the injury or damage occurred must: (i) fully indemnify and hold harmless the Association, Officer, Director, Committee member, Member, agent, or employee against whom such claim or suit is brought; and (ii) defend, at their own cost and expense, any resulting litigation against the Association, Officer, Director, Committee member, Member, agent, or employee. However, there is no obligation to hold harmless, defend or indemnify any party whose gross negligence or willful misconduct was the cause of the injury or damage.~~

~~11.7~~11.6 Actions Against Directors. Members are not permitted, and waive all rights, to file an action or state any cause of action in any pleading against a Director or Officer of the Association, acting within the scope of that Person's duties as a Director or Officer unless the court first determines that the Member seeking to file the pleading has established evidence that substantiates the claim.

ARTICLE 12: DAMAGE/DESTRUCTION TO IMPROVEMENTS

12.1 Generally. All provisions of this Article 12 apply only when the Common Area has been partially or totally destroyed by fire, earthquake, groundwater flooding or other similar casualties.

12.2 Association's Duties. If the Common Areas, any Improvements thereon, and/or any other portion of the Development which the Association is obligated to maintain, repair or replace, are partially or totally destroyed by fire, earthquake, flood or other casualty, the Association must maintain, repair, replace and/or restore same to its former condition (or better) as promptly as practical. The proceeds of any insurance received must be used for such maintenance, repair, replacement and/or restoration.

12.3 Member's Duties. If a Member's Lot, any Improvements thereon, and/or any portion of the Development which the Member is obligated to maintain, repair or replace, are partially or totally destroyed by fire, earthquake, flood or other casualty, the Member must either: (i) restore the same to its former condition (or better) as promptly as practical, or (ii) as promptly as possible remove the damaged Improvement and any debris and place the Lot in a clean and presentable condition to the satisfaction of the Architectural Committee.

12.4 Duties of Board During Reconstruction. If reconstruction is undertaken, the Board must: (i) enter into a written contract with a contractor who is licensed and insured for such repair, reconstruction, and restoration; (ii) disburse insurance proceeds available for the work, along with funds collected by reason of Assessments, in appropriate progress payments; and (iii) take all steps necessary to ensure the commencement and completion of such repair, reconstruction, and restoration in a lawful, workmanlike manner at the earliest possible date.

12.5 Special Assessment for Reconstruction. If the proceeds of insurance obtained by the Association are paid to any Mortgagee of a Lot and, by reason of such payment, the

insurance proceeds are not made available to the Association as trustee, or otherwise, to effect any repair, reconstruction, or restoration of any damage and/or destruction to all or any portion of the Development as provided in these CC&Rs, the amount of such proceeds not made available must be assessed and charged to and against the Member(s) and their Lot as an Emergency Special Assessment. The Emergency Special Assessment must be made by written notification from the Board to the Member or Members against whom made.

ARTICLE 13: MISCELLANEOUS

13.1 Amendment. Amendment or restatement of these CC&Rs is permitted by obtaining the affirmative vote of Members comprising more than fifty percent (50%) of the Voting Power of the Association or as provided for by law, provided that the percentage of the Voting Power necessary to amend a specific provision is not less than the percentage of affirmative votes prescribed for action to be taken under that provision. Any amendment enacted in compliance with this provision becomes effective when recorded with the Offices of all County Recorders where the Development is situated.

13.2 Lender Approval. If a First Mortgagee is entitled, by the terms of these CC&Rs, to consent to, approve, disapprove, or object to a proposed amendment to or restatement of the CC&Rs, but fails to return a ballot, or other form providing written disapproval or objection within 30 days of receipt, such First Mortgagee is deemed to have consented to and approved the proposed amendment or restatement, provided the ballot, or other form permitting written disapproval or objection, was delivered by certified or registered mail with return receipt requested and the delivery signed for by a representative of the First Mortgagee.

13.3 Amendment to Conform to Statute. If a provision in these CC&Rs contradicts current law, according to a written opinion of the Association's legal counsel, on the unanimous approval of the Board of Directors and without approval of the Members, the Board is authorized to amend that provision, but only to the extent necessary to render the provision compliant with applicable law. A resolution explaining the need for the change must be adopted by the Board in an open meeting of the Board and recorded in the minutes.

13.4 Term of CC&Rs. These CC&Rs continue in full force and effect for a term of sixty (60) years from the date of their recordation (the Renewal Date), after which time they are automatically extended for successive periods of twenty (20) years. The provisions of this Article are also subject to any prohibitions against partitioning the Common Area that might apply. These CC&Rs may be terminated if, within six (6) months prior to the Renewal Date of any twenty-year extension period, (i) at least seventy-five percent (75%) of the Members and seventy-five percent (75%) of the First Mortgagees approve by secret ballot circulated by the Association via its Board of Directors to terminate these CC&Rs, and (ii) an appropriate governmental agency has agreed in writing to assume the Association's Common Area maintenance, repair, and replacement obligations, and (iii) certification of the Membership's and First Mortgagee's approval to terminate and the agency's agreement to assume maintenance duties are recorded with the Office of County Recorder in which the Development is situated, and (iv) the Association's contractual and other legal obligations are wound up, and (v) all required corporate filings, tax returns, and notices are filed with appropriate agencies to effectuate dissolution of the Association/corporation, and (vi) insurance tail coverage is

purchased to cover any potential liability the Association may have until all applicable statutes of limitations have run their course.

13.5 Attorneys' Fees. In a lawsuit by the Association seeking the enforcement of the Governing Documents against a Member or to determine the rights or duties of the Member under the Governing Documents, the prevailing party may be awarded reasonable attorneys' fees and costs as permitted by law.

13.6 Notices. Any communication or notice of any kind permitted or required to be delivered pursuant to the Association's Governing Documents, or pursuant to the Davis-Stirling Act, must be in writing.

13.7 Headings. The headings contained in these CC&Rs are for convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision of these CC&Rs.

13.8 Liberal Construction. The provisions of the Governing Documents must be liberally construed to effectuate their purpose of creating a uniform plan for the use, operation and maintenance of the Development.

13.9 Severability. The provisions of these CC&Rs and any other Governing Document are deemed independent and severable and the invalidity, partial invalidity, or unenforceability of any one provision has no effect on the validity or enforceability of any other provision.

13.10 No Public Rights. Nothing contained in these CC&Rs is a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

13.11 Successor Association. If the Association, as a corporate entity, is dissolved, a nonprofit, unincorporated association, without further action, automatically succeeds to all the rights and duties of the corporation. The affairs of the unincorporated association will continue to be governed by these CC&Rs, the Bylaws, Architectural Standards, Landscape Standards, and the Rules and Regulations, as well as any applicable law.

13.12 Conflicting Provisions. When a conflict exists between these CC&Rs and the Articles or the Bylaws, these CC&Rs control. When a conflict exists between the Articles and the Bylaws, the Articles control.

CERTIFICATION

WE CERTIFY this ____ day of _____, 20__ that this Restated Declaration of Covenants, Conditions and Restrictions has been duly approved and adopted by the affirmative vote of at least a majority of the total voting power of Balboa Terrace Homes Association.

President

Secretary

SIGNATURES MUST BE NOTARIZED

DRAFT

REPLACE THIS PAGE WITH NOTARY ACKNOWLEDGEMENT(S)

DRAFT

EXHIBIT “A” – ALLOCATION SCHEDULE FOR ASSESSMENTS

[NOTE TO BOARD: Chart from BAPS here.]

Lot #	Type of Lot	Assess %
1		
2		
3		
4		

DRAFT