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FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR WESTLAKE POINTE HOMEOWNERS ASSOCIATION, INC.

Recording requested by and Mail to:

James Geffner
A Professional Corporation
3500 W. Olive Ave., Suite 1100
Burbank, CA 91505

**FIRST AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WESTLAKE POINTE HOMEOWNERS ASSOCIATION, INC.**

First Amended and Restated Declaration
of Covenants, Conditions and Restrictions for
Westlake Pointe Homeowners Association, Inc.

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**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR WESTLAKE POINTE HOMEOWNERS
ASSOCIATION, INC.**

The Declaration of Covenants, Conditions and Restrictions for Westlake Pointe, a Planned Development Project, executed by Pointe West Homes, Inc., a California corporation ("Declarant"), and recorded on August 19, 1985 as Instrument No. 85-956058 of the Official Records of the County Recorder of Los Angeles County, California ("Original Declaration"), which affects all of the Properties described as Lot 1 through 65, of Tract No. 33534, in the City of Westlake Village, County of Los Angeles, State of California, as per map recorded in Book 959, Pages 47 through 52 of Maps in the office of the County Recorder of Los Angeles ("Properties"), Amendment thereto recorded on November 30, 1992 as Instrument No. 92-2223972 in the Official Records of Los Angeles County, California and Second Amendment thereto recorded on March 1, 2002 as are hereby amended and restated in their entirety to read as follows:

RECITALS

A. Declarant was the original owner of that certain real property (the "Properties") located in the City of Westlake Village, County of Los Angeles, State of California, which is more particularly described in the introductory paragraph hereof.

B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such

Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in California Civil Code section 1351(k). Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. Seventy-six and one half percent of Lots within the Properties voted by written ballot to amend, restate, consolidate and supersede the Original Declaration and both Amendments thereto, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of the Owners to replace the Original Declaration and both Amendments thereto, in their entirety, with the Recordation of this Declaration. The Owners' action to amend, restate and supersede the Original Declaration and both Amendments thereto as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1.01. "Architectural Committee" or "Committee" means the committee created in accordance with Article V, below.

Section 1.02. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.03. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

First Amended and Restated Declaration
of Covenants, Conditions and Restrictions for
Westlake Pointe Homeowners Association, Inc.

Section 1.04. "Association" means Westlake Pointe Homeowners Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 1.05. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 3.07, below, as the same may be in effect from time to time.

Section 1.06. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.07. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.08. "City" means the incorporated municipal City of Westlake Village, in the County of Los Angeles, State of California, and its various departments, divisions, employees and representatives.

Section 1.09. "Common Area" means all property owned by the Association (including all Improvements thereon) in fee or by easement for the common use and enjoyment of the Owners. The Common Area shall include, but not be limited to, Lot 65 of Tract 33534 and Improvements located thereon including the swimming pool, spa, public restrooms, gazebo and entry gate), the private streets, driveways including the stamped concrete area in front of each garage, maneuvering aisles, parking spaces, two fountains, upper and lower entry/exit gates, and any easements owned by the Association.

Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.10. "Common Expense" means any use of Association funds authorized by Article IV, below, and any provision of the Bylaws and includes, without limitation:

(a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area and Common Facilities and any portions of the Lots that the Association is obligated to maintain or repair; (b) all expenses or charges reasonably

incurred to procure insurance for the protection of the Association and its Board of Directors ; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities and any portions of the Lots that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.11. "Common Facilities" means the swimming pool, spa, pool storage and pump house, pool furniture, public restrooms, gazebo and entry gate, private streets, driveways including the stamped concrete area in front of each garage, maneuvering aisles, walkways leading to the front gate of each Lot, parking spaces, two fountains, upper and lower entry/exit gates, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

Section 1.12. "County" means the County of Los Angeles, State of California, and its various departments, divisions, employees and representatives.

Section 1.13. "Declarant" means the original developer of the Properties, namely Pointe West Homes, Inc., a California Corporation.

Section 1.14. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the document referenced in the Preamble to this Declaration together with all amendments and annexations thereto adopted prior to adoption of this Declaration.

Section 1.15. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.16. "Improvement" shall be defined as set forth in Section 5.01, below.

Section 1.17. "Lot" means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.18. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in

person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or by statute.

Section 1.19. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13.06, below.

Section 1.20. "Mortgage" means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

Section 1.21. "Owner" means any person, firm, corporation or other entity in which fee simple title to a Lot is vested as shown by the Official Records of the Office of the County Recorder. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. Except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

Section 1.22. "Properties" means all parcels of real property (Common Area and Lots) described in Recital "A" above, together with all buildings, structures, utilities, Common Facilities, and other Improvements located thereon, and all appurtenances thereto.

Section 1.23. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

Section 1.24. "Regular Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02, below.

Section 1.25. "Residence" or "Residence Improvements" means a private, single-family dwelling of townhouse design constructed on a Lot.

Section 1.26. "Single Family Residential Use" means occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 1.27. "Special Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03, below.

Section 1.28. "Special Individual Assessment" means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.04, below.

Section 1.29. "Subdivision Map" means the map for any portion of the Properties.

Section 1.30. "Voting Power" means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at the time any determination of voting power is made.

ARTICLE II

Property Rights and Obligations of Owners

Section 2.01. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the properties, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable admission and other fees for, and to otherwise designate and control the use of any unassigned parking and storage spaces and] to charge reasonable admission and other fees or to limit the number of guests of Members who may use any recreational Common Facilities.

(b) The right of the Association to adopt Association Rules as provided in Section 3.07, below, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06, below. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or right to use the Common Facilities, other than roads.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to Mortgage the Common Area; provided, however, that the rights of any such Mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.03, below.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the Voting Power of the Association, and their first Mortgagees, consenting to such dedication or transfer, has been Recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. The instrument approving the dedication may be executed in counterparts so long as each counterpart is in recordable form.

(e) All easements affecting the Common Area which are described in Article VIII, below.

Section 2.02. Persons Subject to Governing Documents: All present and future Owners, tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon him or her and that he or she will observe and comply with the Governing Documents.

Section 2.03. Delegation of Use.

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members, tenants, lessees or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be to a single family for Single Family Residential Use and for a term not less than ninety (90) days. The restrictions on multiple family occupancy imposed by this paragraph are intended to protect, enhance and maintain the single family residential atmosphere which exists within the Properties and to avoid an overburdening of Common Areas and Common Facilities.

During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Properties (other than roads), except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence; provided, however, that this restriction shall not apply to any Owner-lessor who is contemporaneously residing in another Residence within the Properties.

Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

(b) Discipline of Lessees. Subject to subparagraph (c) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances which may include initiation of an eviction proceeding in accordance with the following paragraph, suspension of the tenant's privileges to use any recreational Common Facilities or the imposition of fines and penalties against the Owner or tenant.

Whether or not such right is stated in any lease or rental agreement, every Owner who rents his or her Residence automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default in accordance with the procedures specified in this subparagraph (b). If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorneys' fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment (Section 4.04, below) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from California Code of Civil Procedure sections 1165 and 374 and shall only arise if the tenant's or lessee's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.]

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall

have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.06, below.

Section 2.04. Obligations of Owners. Owners of Lots within the Properties shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing on the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member and his or her right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in California Civil Code section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser:

(A) a copy of the Governing Documents;

(B) the Association's most recent financial statement;

(C) a true statement in writing from an authorized representative of the Association as to: (1) the amount of any unpaid Assessments, together with information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold ("delinquency statement"); (2) the amount of the Association's current Regular and Special Assessments and fees; and (3) any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement;

(D) A copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 1363(h), that sets forth any alleged violations of the governing documents that remains unresolved at the time of the request; and

(E) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Within ten (10) days of the mailing or delivery of a written request for the information described in subparagraph (c)(i), above, the Association shall provide the Owner with copies of the requested items. The Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

(d) Payment of Assessments and Compliance With Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to Article IV, below.

(h) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of Recording of the deed evidencing the transfer and, upon such Recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Lot shall automatically cease.

ARTICLE III

Homeowners Association

Section 3.01. Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Where Lots are owned by more than one person, the Board shall have the right, pursuant to Section 3.07, below, to adopt a rule designating the minimum percentage ownership of a Lot to qualify the Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director. Spouses shall be permitted to aggregate their ownership interests to determine either spouse's percentage ownership of a Lot.

Section 3.02. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3.03. Voting Rights of Members. Each Member shall be entitled to one vote for each Lot owned by that Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 13.06, below.

Section 3.04. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 3.05. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon Recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.03, above, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer of membership rights is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.06. Powers and Authority of the Association.

(a) **Powers, Generally.** The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the

Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in the Bylaws.

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including:

- (A) exterior maintenance or repair obligations with respect to individual Residences;
- (B) obligations to enforce the architectural and land use restrictions of Article V;
- (C) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or
- (D) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph (b) shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty four (24) hours prior written notice of its intent to enter the Lot,

specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06 below.

(D) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the Owner's express permission unless the Board determines, in good faith, that an emergency exists of such a nature as to warrant such entry for the protection of lives or property.

Section 3.07. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Section 5.05, below; (iii) the conduct of disciplinary proceedings in accordance with Section 13.06, below; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VII, below; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot; (vii) designating the minimum percentage ownership of a Lot necessary to qualify an Owner as a Member, as more particularly described in Section 3.01, above; and (viii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been: (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing; and (ii) posted in the Association's principal office. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

Section 3.08. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII.

Section 3.09. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual

financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i) The Board member or officer owns no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least one million dollars (\$1,000,000).

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

ARTICLE IV

Assessments

Section 4.01. Assessments Generally.

- (a) Covenant to Pay Assessments. Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; and
- (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.10(b), below.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him/her from the liens and charges hereof, by

waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Lot or any other portion of the Properties.

Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than forty five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities or portions of the Lots which the Association is obligated to maintain]) by preparing and distributing to all Members a budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' approval in accordance with Section 4.08, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property

Owner or as a Member. The Assessment roll (which may be maintained in the form of a computer printout) shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.04(c), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days following the due date as established by the Board. The collection of Regular Assessments in installments as hereinabove provided is for the convenience of the Association only. The total Regular Assessment is levied as of the commencement of the Association's fiscal year and in the event of a default in the payment of any installment, the Association may declare the entire balance of the Regular Assessment to be in default and pursue the remedies set forth in Section 4.10, below, as to the delinquency.

Section 4.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b), below, the Board of

Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this subparagraph 4.03(a)(i) shall be subject to membership approval requirements under the circumstances described in Section 4.02(a), above.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X below.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below:

(i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to subparagraph 4.02(c), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a)(i) of this section shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.06, below and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portions of the Lots which the Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys fees)

shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, the Association shall have the right to enter the Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be effected in accordance with Section 3.06(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Section 4.05. Assessments to Address Emergency Situations. The requirement of a membership vote to approve:

(a) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or

(b) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court; or

(ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities or any portion of the Lots which the Association is obligated to maintain where a threat to personal safety is discovered.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities and those portions of the Lots which the Association is obligated to maintain. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.07. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. If Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 4.09. Maintenance of Assessment Funds.

- (a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more federally insured checking, savings or money market accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit,

money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are required to be maintained by the Association.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the

California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Properties which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

Section 4.10. Collection of Assessments; Enforcement of Liens. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

First Amended and Restated Declaration
of Covenants, Conditions and Restrictions for
Westlake Pointe Homeowners Association, Inc.

(a) Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Assessment Lien. Except as otherwise provided in Section 4.04, above, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

(i) At least thirty (30) days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: **"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."**

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph, below.

(ii) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments

owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) An Owner may dispute the amounts claimed as due and owing in the Delinquency Notice by submitting to the Board a written explanation of the reasons for his or her dispute. If the Owner wishes to submit an explanation, it must be mailed to the Association within fifteen (15) days of the postmark of the Delinquency Notice. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the Owner's explanation.

(iv) An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (25) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner.

(v) The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 1366 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, the name of the record owner of the Owner's Lot against which the lien is imposed. In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraph (viii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose and mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's Lot no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office

of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(vi) A Special Individual Assessment or other monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible may become a lien against the Member's Lot that is enforceable by sale of the Lot in non-judicial foreclosure pursuant to Civil Code sections 2924, 2924b and 2924c.

(vii) A lien created pursuant to subparagraph (v), above, shall be prior to all other liens recorded against the Owner's Lot subsequent to the Notice of Delinquent Assessment, except as described in Section 4.12, below.

(viii) Subject to the limitations of this Section 4.10(b), after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d.

(ix) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(x) If the Association fails to comply with the procedures set forth in this Section 4.10(b) prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code Section 1367.1 in effect as of January 1, 2003. If these sections are amended or rescinded in any manner, the provisions of this Section 4.10(b) automatically shall be amended or rescinded in the same manner. Civil Code Section 1367.1 may have been

amended by the State Legislature, and the Board should confirm the current statutory requirements.

Section 4.11. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Association's Assessment lien (see Section 4.12, below).

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer

of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 4.14. Assignment of Rents Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable; provided, however, that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this section shall be subordinate to the rights of any first Mortgagee.

Section 4.15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

ARTICLE V

Architectural Control

Section 5.01. Architectural Committee Approval of Improvements.

(a) **Approval Generally.** Before commencing construction or installation of any Improvement within the Properties, other than the initial construction of Residences by the

Declarant, the Owner planning such Improvement must submit a written request for approval to the Architectural Committee. The Owner's request shall include structural plans, specifications and plot plans satisfying the minimum requirements specified in the Architectural Rules (see Section 4.05, below). Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural Committee shall base its decision to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in Section 4.06, below.

(b) **Definition of "Improvement".** The term "Improvement" as used herein includes, without limitation, the construction, installation, alteration or remodeling of any buildings, walls, decks, fences, landscaping, landscape structures, walkways, driveways, stamped concrete areas in front of garages, skylights, solar heating equipment, spas, antennas, utility lines or any other structure of any kind; provided, however, that improvements to the interior of any Residence shall not be considered an Improvement, as defined herein, unless the interior improvement involves any structural alteration of, or intrusion into, a party wall, roof or other load bearing wall within the Residence.

(c) **Modifications to Approved Plans Must Also Be Approved.** Once a proposed work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Committee, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Architectural Committee, or the agents or employees of either, that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 5.09 below, including without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained.

Section 5.02. Composition of the Architectural Committee. The Committee shall be composed of a minimum of three (3) Members of the Association appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters

within the Committee's jurisdiction. Committee members shall serve one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

Section 5.03. Duties of the Committee. The Committee shall have the duty to consider and act upon the proposals and plans for Improvements submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to Section 5.05, below, to perform other duties delegated to it by the Board of Directors and to carry out all other architectural review duties imposed upon it by this Declaration.

Section 5.04. Meetings. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Applicant shall be entitled to appear at any meeting of the Committee at which his or her proposal has been scheduled for review and consideration. The Applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Committee meetings shall be communicated before the date of the meeting to any Applicant whose application is scheduled to be heard. If the proposed Improvement will be visible from any neighboring Lot, or involves any entry into, or modification of, the roof or any party wall (as defined in Article IX), the Owners of Residences within the same building structure as the Applicant's Residence shall be notified promptly by the Committee of the Applicant's submittal and shall thereafter be given notice of any Committee meeting where the application is scheduled to be heard.

Section 5.05. Architectural Rules. The Architectural Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Architectural Committee review, including the required content of Improvement plans and specifications]; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects

within the Properties; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.10 below). Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, makes the following findings regarding the proposed project:

- (a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;
- (b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Properties;
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development within the Properties.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location within the Properties if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Properties militate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal. It is expressly agreed that the Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposed Improvement project, so long as the Committee acts reasonably and in good faith.

In approving a request for construction of an Improvement, the Committee may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications, or similar mitigating conditions.

Section 5.07. Delivery of Plans and Specifications. Plans and specifications shall be submitted to the Architectural Committee by personal delivery or first-class mail

addressed to the secretary of the Association or the Chairman of the Architectural Committee at the Association's principal office.

Section 5.08. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within Ninety days (90) or longer at the discretion of the Board, after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

Section 5.09. Enforcement of Architectural Compliance Matters.

(a) In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have the authority to order an abatement ("red tag") of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to and approved by the Committee. If an Improvement project is red tagged, the Owner and his or her contractor shall cease all construction activity until such time as the issue giving rise to the red tag order is resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered.

(b) No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(c) If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the project has been red tagged without justification, the Committee shall notify the Board in writing of such

failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing shall be conducted in accordance with Section 13.06, below.

(d) The approval by the Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the Committee's approval under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

Section 5.10. Variances. The Architectural Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article, or in any land use restrictions specified herein, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Applicants, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Architectural Committee must conduct a hearing on the proposed variance after giving prior written notice to the Architectural Committee and to all Owners of Residences located in the same building structure or within fifty (50) feet of the subject Residence unit. The notice shall also be posted in the Association's principal office within the Properties. The notice shall be posted and mailed to the interested Owners at least fifteen (15) days prior to the date when the Architectural Committee is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) The Architectural Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Properties.

Section 5.11. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as established from time to time by the Board), the Architectural Committee shall Record an estoppel certificate, executed by any two of its members, certifying (with respect to any Lot owned by the Applicant) that as of the date thereof, either: (a) all Improvements made and other work completed by the Owner comply with this Declaration; or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in the Lot through the Owner, shall be entitled to rely on the Association's estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

ARTICLE VI

Association and Owner Maintenance Responsibilities

Section 6.01. Common Area. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all portions of the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

Without limiting the foregoing, the Association shall be responsible for:

- (a) The reconstruction, replacement, or refinishing of any Common Facility or other Improvements within the Common Area as necessary in accordance with the original design, finish or standard of construction of such Improvement.
- (b) The construction, reconstruction, replacement, refinishing of any road, driveway, trail or surface upon any portion of Common Area designated on a Subdivision Map as a private road or parking area.
- (c) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover upon any portion of Common Area.

(d) The placement and maintenance of such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities.

Section 6.02. Owner Maintenance Responsibility.

(a) Except as specifically provided in Section 6.01 above, Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot, including without limitation the glass surfaces, glass doors, windows, screens and screen doors, other exterior doors, window fixtures, any hardware, all components of any attached deck, Improvements within enclosed patio areas, concrete surfaces within the fenced or enclosed areas on the Lot, the interior of his or her Residence and the plumbing, electrical, heating and air conditioning systems servicing his or her Residence.

(b) Each Owner shall also be responsible for the painting, staining, repairing, replacement and care for the exterior building surfaces of all Residences including roofs, gutters, fences, downspouts and exterior walls, the repair and replacement of exterior doors, screen doors, garage doors or exterior lighting fixtures and other hardware glass surfaces; the replacement and care for trees, shrubs, grass, walks, and other landscaping Improvements located within fenced or enclosed patio areas on Lots; and

(c) Maintain the underground sewer, water and electrical lines, located within the boundaries of the Owner's Lot.

Section 6.03. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under

Section 3.06(b), above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.06, below.

Section 6.04. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

Section 6.05. Drainage Structures, Ditches and Swales.

(a) All drainage structures, culverts and canals improved by the Association for the major collection of storm runoff and any natural drainage courses within Common Areas shall be maintained regularly by the Association.

(b) Except as provided in subparagraph (a), above, each Owner shall keep drainage courses, ditches and swales on his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners (including the Association as to any contiguous parcels it owns), maintain all such drainage ditches, swales and culverts common to their Lots in good order.

(c) No Owner or resident shall alter or obstruct a natural drainage course, or materially add to the natural water volume of the drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions, or additions to water volume shall be considered a work of Improvement that is subject to prior review and approval by the Architectural Committee.

ARTICLE VII

Use of Properties and Restrictions

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Properties.

Section 7.01. Single Family Residential Use. The use of the individual Lots in the Properties is hereby restricted to Single Family Residential Use, as defined in Section 1.26 above. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

Section 7.02. Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

Section 7.03. Interior Improvements. No Owner shall undertake any activity or work with respect to the Owner's Residence that will impair the structural soundness or integrity of any adjoining Residence or impair any easement or hereditament, or do any act or allow any condition to exist in or around the Owner's Residence or Lot which will adversely affect any other Residences or their occupants. Any interior Improvement to a Residence involving structural components of the building structure, other than non-load bearing interior walls, shall require prior architectural approval in accordance with Article V, above.

Section 7.04. Common Areas. The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration.

Section 7.05. Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, the operation of excessive noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 7.06. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

Section 7.07. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets in the Properties.

(d) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements] and imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

Section 7.08. Signs. No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. Signs permitted hereunder shall not be nailed to the exterior of any Residence. A-frame or other directional signs of real estate brokers advertising Lots for sale or lease shall only be allowed within the Common Area or roadways within the Properties in strict compliance with applicable Association Rules. The

Architectural Committee, in its discretion, shall be entitled to regulate or prevent altogether, the erection and maintenance of Owner's, agents or broker's directional signs along roadways or on any Common Areas within the Properties.

Section 7.09. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence, garage or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) leasing or renting his or her Residence in accordance with Section 2.03, above; or (e) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Properties. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use and not in violation of this section.

Section 7.10. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

Section 7.11. Storage. Storage of personal property on any Lot shall be entirely within garages and enclosed storage areas. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas.

Section 7.12. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

Section 7.13. Antennas and Similar Devices. In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes on or about the exterior of any building within the Properties unless architectural approval is first obtained in accordance with Article V above. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

Section 7.14. Burning. There shall be no exterior fires whatsoever except barbecue fires located only upon Lots and contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

Section 7.15. Basketball Standards. No basketball standards or fixed sports apparatus shall be attached to any Residence, garage, or carport or erected on any Lot or within the Common Area.

Section 7.16. Machinery and Equipment. No power tools, machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Properties.

Section 7.17. Diseases and Pests. No Owner shall permit any thing or condition to exist upon his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 7.18. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Properties:

(a) All driveways and garages shall be maintained in a neat and orderly condition to allow for the parking of two vehicles within, and garage doors shall be maintained in a

closed position except as necessary to permit ingress and egress of vehicles or to clean or work in the garage area.

(b) The garages are to be used for the parking of standard passenger vehicles and trucks not to exceed three quarter (3/4) tons in gross weight, boats or similar items for storage purposes and shall not be converted to living quarters or work shops or used for the storage of boats, trailers, campers or recreation vehicles which will preclude the parking of the Owner's or occupant's vehicles within the garage.

(c) Designated guest parking areas within the Common Areas are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of their passenger vehicles or the storage of boats, trailers or similar items or personal property. No vehicle shall be parked or left on any street within the Properties except within garages, or specified parking areas so designated by the Board.

(d) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however that the provisions of this section shall not apply to emergency vehicle repairs.

(e) Campers, boats, trailers, motorcycles, commercial vehicles and trucks in excess of one-half tons are not to be parked within the Properties, other than within enclosed garages except for periods not to exceed four (4) hours for the purpose of loading and unloading. Personal property other than authorized vehicles shall not be stored in garages if such storage will necessitate or result in the parking of vehicles on streets within the Properties.

(f) The Board shall have the authority to tow or restrain by use of devices such as the "Denver Boot", at the Owner's expense, any vehicle parked or stored in violation of this section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

(g) Garage doors shall be kept in a closed position except when the door must be opened to permit the entry or exit of vehicles or to provide ventilation to individuals working in the garage area.

(h) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the parking and/or operation of vehicles within the Properties as may be deemed prudent and appropriate.

Section 7.19. Use of Private Streets in Common Area.

(a) Private streets within the Properties shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, other two-wheeled vehicles and cars shall be allowed on such private streets only for ingress and egress.

(b) In order to prevent accelerated deterioration of private roadways, the Association Board shall be entitled to collect deposits from Owners and/or contractors in connection with construction projects within the Properties. Such deposits can be designated as nonrefundable or they can, in the Board's discretion, be applied to correct or repair specific damage caused by the construction in accordance with Section 5.07(d), above.

(c) All operators of motor vehicles, including motorcycles, within the Properties must possess a valid driver's license.

(d) All provisions of the California Vehicle Code must be honored at all times when operating any motor vehicle within the Properties.

(e) Although all roads within the Properties are subject to the California Vehicle Code, the Association shall have the right to adopt reasonable rules regarding the control and use of the roads, vehicles operated thereon and the speed of such vehicles. The Association is further authorized to delegate the discharge of its rights hereunder to a municipality or other governmental entity or to contract with a private security patrol company for such purposes so long as the private character of the roads is not jeopardized by such action.

Section 7.20. Children. Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner/resident and for any property damage caused by such children.

Section 7.21. Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within any Residence or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article X, below) without the prior written consent of the Association and no Owner shall permit

anything to be done or kept on his or her Lot or the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 7.22. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portion of the Properties.

Section 7.23. Variances. Upon application by any Owner, the Architectural Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Committee, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Committee shall follow the procedures set forth in Section 5.10, above, for the granting of architectural variances.

Section 7.24. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13.06 below, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her rights to be heard on the matter.

ARTICLE VIII

Easements

Section 8.01. Encroachment Easements. Each Lot is hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with

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the original design, plans and specifications of Declarant, and due to engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of these encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by the encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurs due to the willful misconduct of the Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist.

Section 8.02. Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets and paved parking areas within the Properties.

Section 8.03. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Properties except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this section shall in no way affect any other Recorded easement on the Properties.

Section 8.04. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Area, or Common Facilities; provided, however, that any entry by the Association or its agents onto any Lot shall only be undertaken in strict compliance with Section 3.06(b), above.

Section 8.05. Boundary Changes. An easement shall exist for use and maintenance as Common Area over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction by Declarant lies between that boundary and a Lot line abutting the Common Area.

Section 8.06. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 8.07. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over the other easements in all respects.

ARTICLE IX

Party Walls and Common Roofs

Section 9.01. Party Walls.

(a) General Rules of Law to Apply. Certain Residences within the Properties have garages which share a common wall and roof. Other Residences share yard fences along common property lines. This Article is intended to address the respective responsibilities of adjoining Owners with respect to such shared Improvements. Each wall and fence which is built as a part of the original construction of the Residences upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall (thus the term "Party Walls" refers to both shared walls and fences). To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

(c) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Party Wall Easements. In all cases where a structural wall constituting a portion of a single Residence, or a structural wall or fence constituting a common wall or fence for two Residences, is located upon the dividing line between adjacent Lots, the Owner of the adjoining Lot shall have reciprocal mutual nonexclusive easements for the maintenance of the wall or fence, the reconstruction of the wall or fence in the event of the partial or total destruction of the same, drainage associated with the wall or the Residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Residence or Residences on the Lot or Lots. The Owner of a Lot having a structural wall or fence situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall or fence is situated shall not attach anything to the outside of the wall or fence without the consent and permission of the Owner of the adjoining Lot upon which the Residence of which the wall or fence is a part is situated.

Section 9.02. Common Roofs. Any roof which is built as a part of the original construction of Residences within the Properties in such a manner that such roof is not clearly located entirely upon one Lot shall constitute a common roof, and to the extent not inconsistent with the provisions of this section, the general rules of law regarding common roofs and of liability for property damage due to negligence or willful acts or

omissions shall apply thereto. References to "cost" shall mean costs not compensated by any insurance proceeds.

(a) Costs of Repairs and Maintenance. The cost of reasonable repair and maintenance of a common roof shall be borne by the Owners whose Lots share such roof in proportion to the extent such roof is located on their Lots, except to the extent that such repair or maintenance is required only on that portion of such roof located entirely on one

Lot. In this latter case, the cost shall be borne by the Owner of the Lot upon which the portion of the roof requiring repair or maintenance is located.

(b) Damage or Destruction. If a common roof is destroyed or damaged by fire or other casualty, any Owner who has used the roof may restore it, and if the other Owners thereafter make use of the roof, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Damages Caused by an Owner's Negligence. Notwithstanding any other provision of this section, any Owner who by his negligent or willful act causes damage to the common roof shall bear the whole cost of repairing the damage so caused.

(d) Rights of Contribution are Appurtenant. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 9.03. Arbitration. In the event of any dispute between Owners concerning a Party Wall or Common Roof, or sharing the cost of repair or replacement of any Party Wall or Common Roof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall be empowered to decide the dispute in accordance with the hearing procedures specified in Section 13.06, below. The Board's decision on the matter shall be conclusive and binding on the parties.

ARTICLE X

Insurance

Section 10.01. Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is obtainable and is available at a reasonable premium cost:

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(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on special form, replacement cost basis on any Common Facilities. The Board may, in its sole discretion, also purchase coverage on the Residence Improvements, with such types of coverage as they shall determine and, in addition, may also purchase coverage on property that may otherwise be the Unit Owners responsibility. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a broad form endorsement. The policies required hereunder shall name as insured the Association. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10.05, below.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall, if available, not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, if available, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional

insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, earthquake insurance, flood insurance, and workers' compensation insurance. The Association shall also purchase and maintain fidelity bonds or insurance in an amount to be determined each year by the Board.

Section 10.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.01, above, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.03. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10.04. Individual Fire and Casualty Insurance Limited. Except as provided in this section, no Owner can separately insure his or her Residence or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 10.01(a), above. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 10.01(a), above, that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Lot, along with any property excluded or limited in the master policy, may be separately insured by the Owner.

Section 10.05. Trustee. All insurance proceeds payable under Section 10.01, above, and subject to the rights of the Mortgagees under Section 10.07, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 10.06. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 10.01, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 10.07. Distribution to Mortgagees. Subject to the provisions of Article XIV below, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

ARTICLE XI

Damage or Destruction

Section 11.01. Destruction; Proceeds Equal or Exceed Eighty Five Percent (85%) of the Reconstruction Costs. If there is a total or partial destruction of any Residence or Common Facility Improvements within the Properties, and if the available proceeds of the insurance maintained pursuant to Article X, above, are sufficient to cover not less than eighty five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, seventy five percent (75%) of the "eligible Members" (as defined in Section 11.04, below), determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 11.02. Destruction; Proceeds Less Than Eighty Five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty five percent (85%) of the cost of repair and reconstruction, repair and reconstruction may nevertheless take place, if, within ninety (90) days from the date of destruction, eligible Members then holding at least fifty one percent (51%) of the total voting power, determine that such repair and reconstruction shall take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 11.03. Rebuilding Procedures. If the eligible Members determine to rebuild, pursuant to Section 11.01 or 11.02, above, the Owner of each Lot located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Lot, over and above the available insurance proceeds. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Lot bears to the total square footage of the floor area of all Lots. If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Lot

of such Owner which may be enforced under the lien provisions contained in Article IV, above, or in any other manner provided in this Declaration.

If any Owner disputes the amount of his or her proportionate liability under this section, such Owner may contest the amount of his or her liability by submitting to the Board within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by fifty one percent (51%) of the total voting power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 11.04. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this Article, the Members eligible to vote shall be: (a) the requisite percentage of the total voting power of the Association in the case of any damage or destruction of Common Facilities; and (b) in the case of any damage to, or destruction of, Residences, the requisite percentage shall be of those members whose Residences are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.06 of the Bylaws.

Section 11.05. Rebuilding Contract. If the Members who are eligible to vote on the matter determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Properties substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 11.06. Rebuilding Not Authorized. If the Members who are eligible to vote on the matter determine not to rebuild, then any insurance proceeds then available for rebuilding shall be used or distributed as follows:

(a) If, prior to the expiration of one hundred twenty (120) days from the date of destruction, seventy five percent (75%) of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Lots within the Properties consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Lots which were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser), using the available proceeds of insurance for such purpose. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Lot and each Owner by accepting a deed to a Lot agrees to be bound by these provisions and to sell his or her Lot by grant deed to the Association as provided herein. Concurrently with such purchase, the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Properties the Lots so purchased.

(b) Notwithstanding the determination of eligible Members not to rebuild pursuant to Section 11.01 or 11.02, above, any Lots which are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid first, from the insurance proceeds remaining after the purchase of Lots pursuant to subparagraph (a) of this section, if any, and second, from a Special Individual Assessment levied against all remaining Owners in the manner described in Section 11.04, above.

(c) If the required seventy five percent (75%) of all Owners and institutional first Mortgagees do not consent to purchase the Lots which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Lots in the Properties, as of a date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) days from the date of destruction, to Record a certificate declaring the intention of the Members not to rebuild.

Section 11.07. Minor Repair and Reconstruction. In any case, the Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Five Thousand Dollars (\$5,000). Any amounts paid by the Board up to and including Five Thousand Dollars

(\$5,000) shall be assessed to the Lots which are damaged upon the basis of the ratio of the square footage of the floor area of the Lot to be assessed to the total square footage of the floor area of all Lots to be assessed. In the case of damage to Common Facilities which does not exceed Five Thousand Dollars (\$5,000), all Lots shall be assessed for an equal portion of any uninsured expense.

Section 11.08. Appraiser. Wherever in this Article or Article 12 (condemnation), below, reference is made to a determination of the value or fair market value of one or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

ARTICLE XII

Condemnation

Section 12.01. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Properties, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Properties hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Properties, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

Section 12.02. Distribution and Sale Proceeds of Condemnation Award.

(a) Total Sale or Taking. A total sale or taking of the Properties means a sale or taking:

(i) that renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or

(ii) that renders the Properties as a whole uneconomical as determined by the vote or written consent of sixty six and two-thirds percent (66 2/3%) of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Properties, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Lot bears to the fair market value of all Lots on the Properties. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Properties, meaning a sale or taking that is not a total taking as determined in Section 12.02(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(i) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Lots on the Properties whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 12.02(b)(i), above, (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Properties the Lots so sold or taken; then

(iii) To any remaining Owner and to his or her Mortgagees, as their interest may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

ARTICLE XIII

Breach and Default

Section 13.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance. Without limiting the generality of the foregoing Section 13.01, above, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.03. Attorneys' Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented pursuant to the Governing Documents or to California Civil Code section 1354, as it may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted pursuant to California Civil Code section 1354, in which there is not an agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

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Westlake Pointe Homeowners Association, Inc.

Section 13.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 13.05. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 13.06. Rights and Remedies of the Association.

(a) **Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section.

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of California Civil Code section 1354 or otherwise by law.

(b) **Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (ii), below.

(ii) No disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notices by personal delivery or first-class mail, that the Board of Directors will be meeting to consider imposing such discipline. The notice shall contain at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.

If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

In accordance with Civil Code section 1363(h), disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this section.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following the date when the fine is levied.

The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Properties or any portion thereof.

(iii) The notice and hearing procedures set forth in this Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.10, above, and any other

notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection.

(e) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(f) Rules Regarding Disciplinary Proceedings. The Board, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 13.07. Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Association shall first comply with the provisions of California Civil Code section 1354 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

ARTICLE XIV

Protection of Mortgagees

Section 14.01. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Section 4.10, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Section 4.10, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such Recorded Mortgage.

Section 14.02. Amendment of This Declaration. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01, above, which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recording thereof is given to the Association prior to the Recording of such amendment.

Section 14.03. Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

Section 14.04. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. The Association or its successors and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

Section 14.05. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot(s) securing the Mortgage;
- (b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 14.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

Section 14.06. Certain Restrictions Affecting the Association.

Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty seven percent (67%) of the Owners or sixty seven percent (67%) of the first Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one vote for each Lot, the Association shall not:

- (a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Properties, shall not be deemed a "transfer" as that term is used in this subparagraph (a));
- (b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards;
- (c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Properties, or the enforcement thereof, as provided for in this Declaration;
- (d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided for in Article X above; and
- (e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

Section 14.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks

provided for in Article X above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

Section 14.08. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

- (a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;
- (b) Require the Association to provide an audited statement for the preceding fiscal year: (i) at no expense to the requesting entity when the Properties consist of 50 or more Lots; and (ii) at the requesting entity's expense when the Properties consist of fewer than 50 Lots and no audited statement is available; and
- (c) Receive written notice of all membership meetings and designate a representative to attend all such meetings.

Section 14.09. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Properties; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 14.10. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 14.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of

the Owners of the Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Section 14.06 above, Eligible Mortgagees who represent at least fifty one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or de-annexation of property to or from the Properties;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (x) restoration or repair of the Properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(xi) any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or

(xii) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Section 14.06 above, Eligible Mortgagees who represent at least sixty seven percent (67%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Properties.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

Section 14.13. Declaration to Conform With Mortgagee Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Properties in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

ARTICLE XV

Notices

Section 15.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: To the then current independent property manager or to such other address as the Association may from time to time designate in writing to the Owners.

Section 15.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 15.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

ARTICLE XVI

No Public Rights in the Properties

Nothing contained in this Declaration shall be deemed to be gift or dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

ARTICLE XVII

Amendment of Declaration

Section 17.01. Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions that are for the exclusive benefit of the Declarant; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

Section 17.02. Amendment of the Declaration, Generally. This Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of the Members. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals For Amendments to Particular Provisions:

(i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in section 13.12, above.

ARTICLE XVIII

General Provisions

Section 18.01. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the Recording of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 60-year term or any such

10-year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 18.02. Annexation of Additional Property.

(a) Membership Approval Required. Additional real property may be annexed to the Properties and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise not less than sixty six and two-thirds percent (66 2/3%) of the voting power of the Association. Upon obtaining the requisite approval pursuant to this section, the owner of any real property who desires to annex such property to the Properties and add it to the general plan and scheme of this Declaration and subject the property to the jurisdiction of the Association, shall Record a Declaration of Annexation as more particularly described in subsection (b), below.

(b) Declaration of Annexation. Any annexations of real property to the Properties authorized under subparagraph (a), above, shall be effected by Recording a Declaration of Annexation, or other similar instrument, with respect to the additional real property. The Declaration of Annexation: (i) shall be executed by the owner of the subject property; (ii) shall extend the general plan and scheme of this Declaration to such real property; and (iii) may contain such additions to, and modifications of, the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added real property, so long as the supplemental restrictions are consistent with the general plan and scheme of this Declaration and all applicable laws and governmental regulations. Any such supplemental declaration may set forth use restrictions and the design and building standards which shall apply to the annexed parcel in question or may give blanket approval for development of that parcel in accordance with specific architectural plans and drawings which are signed, dated and incorporated by reference in the supplemental declaration.

The filing of a Declaration of Annexation shall constitute and effectuate the annexation of the additional real property described therein, and thereupon that real property shall become and constitute a part of the Properties, and be subject to, and encompassed within, the general plan and scheme of this Declaration. Lots within the annexed property shall thereupon become subject to Assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots within the annexed real property shall automatically become Members.

Section 18.03. Statutory References. In the event that any statute in this Declaration, whether stated by code and number, or named by body of law, is amended, repealed, renumbered, or renamed, all references to such statute or body of law shall refer to the amended, repealed, renumbered, or renamed statutory provisions.

Section 18.04. Construction.

(a) **Restrictions Construed Together.** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) **Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

(f) **References to State Statutes.** Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to

the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

DATED: *February 15*
January , 2005.

WESTLAKE POINTE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation

By *Gene Burke*
GENE BURKE, President

By *Roy Harrow*
ROY HARROW, Secretary

First Amended and Restated Declaration
of Covenants, Conditions and Restrictions for
Westlake Pointe Homeowners Association, Inc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

LOS ANGELES

} ss.

On FEBRUARY 15, 2005

Date

before me, PATRICIA SHAFFER

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

GENE BURKE

Name(s) of Signer(s)

- personally known to me
 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 of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST AMENDED AND RESTATED DECLARATION --

Document Date: JANUARY 14, 2005 Number of Pages: 70

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: GENE BURKE

RIGHT THUMPRINT OF SIGNER

Top of thumb here



- Individual
 Corporate Officer — Title(s): PRESIDENT
 Partner — Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

Signer Is Representing: WESTLAKE POINTS HOA

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

} ss.

On February 15, 2005 before me, PATRICIA SHAFFER

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ROY HARROW

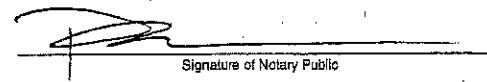
Name(s) of Signer(s)

personally known to me

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 of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: FIRST AMENDED AND RESTATED DECLARATION...

Document Date: JANUARY 14, 2005 Number of Pages: 70

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: ROY HARROW

- Individual
- Corporate Officer — Title(s): SECRETARY
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: WESTLAKE POINT HOA

