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**(Space Above For Recorder's Use)**

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
BENICIA MARINA HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**BENICIA MARINA HOMEOWNERS ASSOCIATION**

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Benicia Marina Homeowners Association, a nonprofit mutual benefit corporation (hereinafter sometimes referred to as the "Association").

**RECITALS**

A. WHEREAS, the Association is the successor in interest to Southern California Savings and Loan Association, which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association dated September 2, 1983, and recorded on October 13, 1983 in Book 1983, Page 85483 et seq., in the Official Records of Solano County, State of California (the "1983 Declaration").

B. WHEREAS, the 1983 Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Solano, State of California, and more particularly described as follows:

All of that certain real property shown as Lot One (1) on that certain Map entitled "BENICIA MARINA – PHASE I, FOR CONDOMINIUM PURPOSES, PORTIONS OF PARCEL 'A', BENICIA MARINA (P.M. 18-75), AND PARCEL 1 (P.M. 3-29) AND THE PROPERTY SHOWN AS S.P. CO (67 DEEDS 3), (P.M. 3-29) CITY OF BENICIA, CALIFORNIA," filed in the Office of the Recorder of Solano County, State of California, on the 29<sup>th</sup> day of December, 1982 in Book 42 of Parcel Maps at Page 50.

C. WHEREAS, the real property identified and described in Paragraph B, above, is owned by the City of Benicia. On June 10, 1982, the City of Benicia entered into a ground lease agreement with Old Capitol Marina Ltd. covering the

above-identified and described property. A Short Form Memorandum of Lease was recorded on December 29, 1982, in Book 1982, Page 86089, Solano County Official Records. On June 10, 1982, Old Capitol Marina Ltd. executed a sub-lease agreement with Declarant, and conveyed its interest in the original lease to Declarant. A Short Form Memorandum of Sublease was recorded on December 29, 1982, in Book 1982, Page 86094, Solano County Official Records.

D. WHEREAS, the Option to Purchase Fee Title to Real Property ("Phase I Option to Purchase") dated September 13, 1984 was recorded on December 19, 1984 in Book 1984, Page 109799, Series No. 56451, Solano County Official Records which gave Declarant the option to purchase fee title to the real property identified and described in Paragraph B., above.

E. WHEREAS, the Irrevocable Exercise and Acceptance of Option to Purchase ("Phase I Notice of Exercise") dated December 12, 1984 was recorded on December 31, 1984 in Book 1984, Page 113515, Series No. 53274, Solano County Official Records in which Declarant irrevocable exercised the Phase I Option to Purchase.

F. WHEREAS, a Restated and Amended Benicia Marina Lease Agreement (Phase I Condominiums Parcel) ("Lease") between the City of Benicia (Landlord) and Southern California Savings and Loan Association (Tenant and Declarant) was executed on April 22, 1990. The Lease specifically provides, in Recital, paragraph E:

Tenant has performed all obligations of Tenant under the Phase I Option to Purchase and the Phase I Notice of Exercise, and the conveyance by Landlord to Tenant for the benefit of Unit Owners of fee title to the land underlying the Phase I Condominium Project awaits only Landlord's payoff of its loan obligations on or before the Operative Date.

G. WHEREAS, as set forth in the Phase I Option to Purchase, Phase I Notice of Exercise, and Lease, the City of Benicia will convey fee title of the property underlying the 69 individual condominium units no later than December 31, 2028. Title shall be conveyed to the individual Owners or, alternatively, to the "Developer" who shall then convey fee title to the individual Owners. The City of Benicia confirmed this in a letter from the City Attorney dated August 12, 2008, attached hereto as Exhibit B.

H. WHEREAS, Southern California Savings and Loan Association assigned its interests in the Lease and all related documents to The Butterfield Company, LLC, per the Memorandum of Assignment of Acceptance recorded June 30, 1995 as Instrument No. 1995-00038102. Therefore, The Butterfield Company, LLC (aka Butterfield Ranch Company, LLC) is the "Developer" at the

time the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association is recorded.

I. WHEREAS, Members, constituting at least seventy five percent (75%) of the Members of the Association, desire to amend, modify, and otherwise change the 1983 Declaration, pursuant to Article XI, Section 4 thereof;

J. NOW, THEREFORE, pursuant to Article XI, Sections 4 and 7 of the 1983 Declaration, Members, constituting at least seventy five percent (75%) of the Members of the Association, and the City of Benicia, do hereby declare that the aforesaid 1983 Declaration, be and hereby is AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association;

K. IT IS FURTHER HEREBY DECLARED that the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association have been approved by the City of Benicia, as required by Article XI, Section 7 of the 1983 Declaration;

L. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Condominium Project within the meaning of section 1351(f) of the *Civil Code*;

M. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof; and

N. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in section 1354 of the *Civil Code*, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

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

1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.6.

1.3 Architectural Control Committee. "Architectural Control Committee" and "ACC" shall mean the Architectural Control Committee created pursuant to Article 7 of this Declaration and Article 10 of the Bylaws.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of Benicia Marina Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, and Reimbursement Assessments.

1.6 Association. "Association" shall mean the Benicia Marina Homeowners Association, its successors and assigns.

1.7 Balcony. "Balcony" shall mean a raised platform, typically encompassed by a railing, adjacent to a Unit. The exclusive use of each Balcony is granted to or reserved for the specific Unit to which it is adjacent, therefore Balconies are Exclusive Use Common Areas. Each Balcony is depicted on the Plan as a "B" followed by the Unit number to which it is assigned and the number 1, 2 or 3.

1.8 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.9 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of the Benicia Marina Homeowners and any duly-adopted amendments thereto.

1.10 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrading, or replacing of an existing improvement.

1.11 Carport. "Carport" shall mean a covered space located in the Common Area established and designed for the parking of motor vehicles, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use or possession of the Residents of a particular Unit. Carports are Exclusive Use Common Areas. Each Carport is depicted on the Plan as a "PS" followed by the Unit number to which it is assigned and/or appurtenant and the number 1.

1.12 City. "City" shall mean the City of Benicia.

1.13 Civil Code. "*Civil Code*" shall mean the California Civil Code as amended from time to time.

1.14 Common Area. "Common Area" shall mean all real property comprising the Development which is owned by all of the Owners in common, but excluding the Units. Fee title to the Common Area is currently owned by the City of Benicia, but shall be conveyed to the Owners as tenants in common, as explained in Exhibit B attached hereto.

1.15 Condominium. "Condominium" shall mean an estate in real property, as defined in *Civil Code* section 1351(f), consisting of an undivided leasehold interest in all or any portion of the Common Area (which shall convert to a fee interest, as more particularly described in Exhibit B attached hereto) together with a separate fee interest in a Unit and all easements appurtenant thereto as described in the Declaration or in the deed conveying a Condominium.

1.16 County. "County" shall mean the County of Solano.

1.17 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association, recorded in the Office of the Recorder of Solano County, California, and any amendments thereto.

1.18 Development. "Development" shall mean all of the real property described in this Declaration which comprises the Benicia Marina condominium development, including all structures and other improvements located at any time upon or adjacent to said real property.

1.19 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit, including, without limitation, chimneys, chimney caps, flues, Balconies, Carports, Garages, assigned Parking Spaces and Patios. Exclusive Use Common Area is synonymous with the term "Restricted Common Area" used in the Plan.

1.20 Garage. "Garage" shall mean an enclosed portion of Common Area established and designed for the parking of motor vehicles, the exclusive use of which is set aside, allocated, assigned and/or restricted to the exclusive use or possession of the Residents of a particular Unit. Garages are Exclusive Use Common Areas.

1.21 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules, and the policies and resolutions adopted by the Board and distributed to the Members.

1.22 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.

1.23 Map. "Map" means the subdivision map entitled "BENICIA MARINA – PHASE I, FOR CONDOMINIUM PURPOSES, PORTIONS OF PARCEL 'A', BENICIA MARINA (P.M. 18-75), AND PARCEL 1 (P.M. 3-29) AND THE PROPERTY SHOWN AS S.P. CO (67 DEEDS 3), (P.M. 3-29) CITY OF BENICIA, CALIFORNIA," recorded in the Office of the Recorder of Solano County, State of California, on the December 29, 1982 in Book 42 of Parcel Maps at Page 50.

1.24 Member. "Member" shall mean an Owner.

1.25 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who: is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents; is otherwise free from sanctions imposed by the Association; and is in compliance with all provisions of the Governing Documents.

1.26 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.

1.27 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.

1.28 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Development.

1.29 Parking Space. "Parking Space" shall mean an uncovered space located in the Common Area established and designed for the parking of motor vehicles. Parking Spaces may be assigned or unassigned. The exclusive use of each assigned Parking Space is set aside, allocated, assigned and/or restricted

to the exclusive use or possession of the Residents of a particular Unit. Therefore, assigned Parking Spaces are Exclusive Use Common Areas. Each assigned Parking Space is depicted on the Plan as a "PS" followed by the Unit number to which it is assigned and the number 2. Unassigned Parking Spaces are available to Residents and their guests for the parking of motor vehicles on a first come, first served basis.

1.30 Patio. "Patio" shall mean a ground level improvement made of concrete or comparable material and adjacent to a Unit. The exclusive use of each Patio is set aside, allocated, assigned and restricted to the exclusive use or possession of the Residents of the particular Unit to which it is adjacent, therefore Patios are Exclusive Use Common Areas. Each Patio is depicted on the Plan with the letter "P."

1.31 Plan. "Plan" means the Condominium Plan attached as Exhibit A to the 1983 Declaration.

1.32 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.9.

1.33 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

1.34 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

1.35 Resident. "Resident" shall mean any person who resides in a Unit within the Development whether or not such person is an Owner as defined in Section 1.24 above.

1.36 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.37 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.7.

1.38 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on

the basis of one vote for each Unit, excluding any Unit as to which an Owner is not then a Member in Good Standing.

1.39 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Development. Each Unit is an individual residence shown as separately designated and numbered areas on the Plan. Each Unit consists of the interior space bounded by and contained within the interior unfinished surfaces (which unfinished surfaces shall not include paint, paper, wax, tile, enamel or other finishes) of the floors, ceilings, and perimeter walls; provided, however, that bearing walls located within a Unit (except for the finished surfaces thereof) are Common Area and not part of the Unit. Each Unit further consists of the utility installations, fixtures, cabinetry and appliances located within its boundaries including, without limitation, oven, range and fans; garbage disposal unit; dishwasher unit; refrigerators; freezers; washing machines, dryers and vents; hot water heaters; heaters/furnaces; lighting fixtures; heating conduits; any air conditioning units, condensers, and equipment serving such Unit; plumbing fixtures including bathtubs, sinks and wash basins, shower stalls, toilets, and metal plumbing fixtures (including diverters); fireplaces and fireboxes; telephone facilities; smoke alarms and fire sprinklers; and interior partitions which are located entirely within the boundaries of the Unit they serve. Each Unit includes both the portion of the building so described and the air space so encompassed. There are 69 Units in the Development.

## ARTICLE 2

### HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association shall manage and operate the Development in accordance with the Governing Documents and California law. The Association shall have all of the powers set forth in the Governing Documents together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Membership in the Association shall include, and shall be limited to, all Owners of any Condominium located within the Development. Membership shall be appurtenant to and may not be separated from ownership of a Condominium, and shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Condominium to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Condominium including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

2.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors consisting of five (5) Owners who are elected by Members in Good Standing and who are themselves Members in Good Standing. The Members shall elect Directors as provided in the Bylaws.

2.5 Association Rules. Subject to *Civil Code* section 1357.100 et seq., the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association.

2.6 Assessments. The Association shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 8 of this Declaration.

2.7 Insurance. The Board shall obtain and maintain the insurance policies as provided below unless the Board determines that the cost is so unreasonable as to make maintenance of the insurance not in the best interest of the Association. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take.

2.7.1 General Provisions and Limitations. All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear;

(b) Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto;

(c) Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees;

(d) Subrogation. A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(e) Primary Coverage. That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(f) Cancellation/Modification. That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association;

(g) Endorsements. An agreed amount endorsement, if the policy contains a coinsurance clause; a guaranteed replacement cost or replacement cost endorsement; and an inflation guard endorsement; and

(h) Term. The period of each policy shall not exceed three (3) years and must permit short rate cancellation by the insureds.

2.7.2 Types of Coverage. Unless the Board determines otherwise, the following policies shall be obtained:

(a) Property Insurance. A blanket policy of fire and extended coverage insurance covering all improvements within the Development, including the Common Area and all Units (but not interior upgrades and personal property) in an amount equal to the full replacement cost (without deduction for depreciation) of such improvements. A replacement cost endorsement shall be part of the policy. Any such blanket policy shall specify as insureds all Owners, their Mortgagees, and the Association as their respective interests may appear;

(b) Liability Insurance. A combined single limit policy of liability insurance covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents, or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area, with limits set by the Board but in no event less than those set forth in *Civil Code* section 1365.9. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured;

(c) Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development;

(d) Fidelity Bond. A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount which shall be determined by the Board. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation;

(e) Directors and Officers. Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in *Civil Code* section 1365.7(a)(4); and

(f) Other Insurance. The Association may obtain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

2.7.3 Deductible. Owners shall be responsible to pay the deductible on any Association insurance applicable to a loss resulting from the conduct or negligence of the Owner or from any loss which emanates from an Owner's Unit which damages Common Area or the Unit and improvements of another Owner.

2.7.4 Insurance by Owner. Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a property insurance policy which provides coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent, in an amount to cover the Unit interior (including upgrades) and the personal property contained therein. The policy shall also provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. The Board may periodically require each Owner to provide a certificate from the Owner's insurer certifying that the required insurance under this Section 2.7.4 has been procured and is in full force and effect.

2.7.5 Claims Submission. No Owner may make a claim to or put either the agent or any insurance company providing insurance to the Association on notice of any damages or claim relating to Association-maintained insurance. Claims may only be made by the Association.

2.7.6 Notice of Damage to Unit. All Owners must notify the Association of any damage sustained to their Unit to which Association-maintained insurance may apply within 24 hours of the time when the Owner

knew or should have known of the damage. Any reduction in insurance coverage available or premium increase resulting from the failure to provide notice of damage as required herein shall be the responsibility of the subject Member and not the Association and may be subject to a Reimbursement Assessment.

2.7.7 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

2.7.8 Annual Notice to Members. The Association shall provide a summary of all existing Association policies of property, general liability, earthquake, flood and fidelity insurance, as required by *Civil Code* section 1365.

2.8 Acquisition of Property. The Board, acting on behalf of the Association, shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association.

2.9 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area, provided that in any fiscal year expenditures for Capital Improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year or five thousand dollars (\$5,000), whichever is more, except upon the approval of a majority of the Total Voting Power of the Association.

2.10 Sale or Transfer of Association Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, grant easements, or otherwise transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of a majority of the Total Voting Power of the Association.

2.11 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Unit Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association, subject to the limitations set forth in the Governing Documents and subject to any restrictions that may be contained in the Lease. If the Association acquires fee title to or an easement right over Common Area,

and an exception as set forth in *Civil Code* section 1363.07 does not apply, the approval of a majority of quorum of the Members (a "Simple Majority") shall be required before the Board may grant exclusive use of any portion of that Common Area to any Unit Owner.

2.12 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Unit for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities.

### ARTICLE 3

#### OWNERSHIP RIGHTS AND EASEMENTS

3.1 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Development shall include: (i) a designated Unit; (ii) an undivided 1/69th leasehold interest in the Common Area; (iii) a membership in the Association; and (iv) any exclusive easements or easements appurtenant to such Unit and such other easements as are applicable, all as described in the Declaration or in the deed to the Unit. No later than December 31, 2028, the City of Benicia shall convey an undivided 1/69th fee title interest in the Common Area to each Owner. The undivided interests in the Common Area (whether leasehold or fee) shall not be severed or conveyed separately from the respective Units to which they are appurtenant, and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable. In interpreting deeds, it shall be conclusively presumed that the then-existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, and regardless of any settling or lateral movement of buildings or minor variance between the boundaries shown on the deed, the Declaration and the actual existing physical boundaries.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support over and through the Common Area; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and

pass with the title to every Condominium, subject to the following rights and restrictions:

(a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon;

(b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;

(c) The right of the Board to suspend an Owner's rights and privileges as a Member, including voting rights and the right to use the recreational facilities, for any period during which any Assessment against such Owner's Condominium remains unpaid and/or for infraction of the Governing Documents of the Association;

(d) The right of the Board, as set forth in Section 3.11, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.11 and *Civil Code* section 1363.07 and any successor statute thereto;

(e) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and

(f) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Unit or any ownership interest within the Development must notify the Association of his or her acquisition of an ownership interest. Notice must be provided in writing, to the Association's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Membership Rights. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents. Each Owner shall notify the Association's managing agent of the names of any tenants of such Owner's Unit. Each Owner or tenant shall also notify the Association's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which

each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities. The renting and leasing of Units shall be subject to the provisions of Article 5 of this Declaration.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

3.7 Notice of San Francisco Bay Conservation and Development Commission Jurisdiction. This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission ("BCDC"). Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction. As provided by *Civil Code* section 1353(a)(4), the preceding statement does not constitute a title

defect, lien or encumbrance. The BCDC permit that applies to this Development is Development Permit No. 5-77 (issued on June 16, 1977, as amended) (the "BCDC permit"). The Association shall have the affirmative duty to enforce the provisions of the BCDC permit as it relates to the affairs of the Association. Additionally, the Association shall take no action which would be in conflict with the BCDC permit and no amendment of the Association's governing documents which affects the provisions of such permit shall be made without prior written approval of BCDC.

3.8 Easements in General. In addition to all easements reserved and granted by the Plan, and the easements provided in Section 3.2, there are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

3.9 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure or any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist.

3.10 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable, satellite or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for: (i) those installations maintained by utility companies, public, private, or municipal; and (ii) utility installations which are within a Unit as defined in Section 1.33. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Units.

3.11 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

3.12 Public Access Easement. The public shall enjoy a right of access free of charge over certain Common Area within the Development, for walking, viewing, sitting, picnicking, bicycling and related purposes, as designed on the BCDC Map (attached as Exhibit M to the 1983 Declaration) as "Public Access/Homeowners' Easement."

3.13 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition therefore; provided, however, that if any Unit is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

## **ARTICLE 4**

### **USE RESTRICTIONS**

4.1 Residential Use. Units shall be occupied and used for residential purposes only. The number of occupants per Unit shall not exceed two (2) individuals per bedroom plus one, so long as said limitation is not in conflict with any governmental regulation or ordinance.

4.2 Rental of Units. The rental or lease of any Unit within the Development shall be subject to the provisions of the Governing Documents and Article 5 of this Declaration.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof. Copies of any licenses or permits issued or

required for such businesses allowed by this Article must be provided to the Association at all times that such businesses are operated.

4.4 Child Care Facilities. Child care facilities may be maintained in any Unit within the Development so long as they comply with all governmental requirements. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under *Health and Safety Code* section 1597.531. This Section 4.4(a) is intended to be and shall be conclusively deemed to be the written request to the operator or owner from the Association as specified in *Health and Safety Code* section 1597.531;

(b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability, action or cause of action arising out of the existence and operation of the day care center;

(c) Abide by and comply with all of the Association's Governing Documents, including all Rules;

(d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and

(e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

4.5 Offensive Conduct, Nuisances, Noise. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area.

4.6 Use of the Common Area. All use of Common Area is subject to the Governing Documents and no modifications of any type shall be made to the Common Area without the express written permission of the Board. The

Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area shall be monopolized by any Owner, group of Owners, or tenants without the prior written approval of the Board of Directors.

4.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit.

4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 7, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Architectural Control Committee or, in the event the ACC is not in existence, the Board.

4.9 Flooring Restrictions. Wall-to-wall carpeting shall be required at all times, on all floors other than kitchens and bathrooms, in each Unit which is located above the interior of any other Unit. No replacement of any floor covering on any floor above the interior of another Unit with a material other than padding and carpeting which meets all governmental requirements relating to acoustics and noise transmission shall occur without the prior written approval of the Board and/or ACC. This restriction on hard-surface flooring shall not apply to any Unit located above another Unit in which hard-surface flooring was installed on floors other than kitchens and bathrooms prior to the date that this Declaration was recorded. However, the approval of the Board and/or ACC must be obtained prior to the replacement of any such hard-surface flooring with a material other than padding and carpeting which meets all governmental requirements relating to acoustics and noise transmission.

4.10 Sports Apparatus. No basketball standards (including portable basketball standards) or fixed sports apparatus shall be placed upon or attached to any portion of the Development without the written permission of the Board and/or ACC.

4.11 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations and Architectural Rules, if any. There shall be no free-standing exterior mailboxes or newspaper tubes.

4.12 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Development.

4.13 Satellite Dishes and Antennas. The Board may adopt Rules regarding the installation and maintenance of antennas and satellite dishes and related wiring for all telecommunications devices.

4.14 Animals.

4.14.1 Limitation on Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A reasonable number of common domestic household pets (i.e., dogs, cats and birds) may be kept in each Unit. Unless otherwise provided in the Rules, "reasonable numbers" shall be deemed to limit the total number of all dogs, cats, and birds kept in a Unit to two (2). While in Common Area each dog must be restrained on a leash held by a responsible person capable of controlling it.

4.14.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal. The Owner shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, guests, tenants, or invitees.

4.14.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

4.15 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in dumpsters in a number, location and size as determined by the Board of Directors. Such dumpsters shall be concealed from view. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of the Development, except in such containers.

4.16 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.

4.17 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or operated within the Development except as is customary and necessary in connection with approved construction:

4.18 Signs, Banners, Flags. No sign of any kind shall be displayed to the public view from any portion of the Development except:

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed on or in an Owner's Unit, and limited to the fullest extent permitted by *Civil Code* section 1353.6;
- (c) A single sign of customary and reasonable dimension and design complying with the Association or Architectural Review Guidelines and reasonably located on a Unit advertising a Unit for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States subject to any city or county restrictions as to size and as to time, place, and manner of display;
- (f) A single identification sign which has been approved by the Architectural Control Committee located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (g) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (h) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (i) Signs on the Common Area as approved by the Architectural Control Committee for a purpose reasonably related to the affairs of the Association.

4.19 Vehicles and Parking. The primary parking areas for vehicles of Owners and Residents shall be the Carport, Garage, and/or assigned Parking Space assigned to the Unit of the Owners or Residents. Unassigned Parking Spaces are available to Residents and their guests for the parking of motor vehicles on a first come, first served basis.

4.20 Prohibited Vehicles. No trailer, camper, mobile home, recreational vehicle, boat, golf cart or similar equipment or any commercial vehicle or truck other than a standard size pickup truck, shall be parked, kept, stored, or permitted to remain upon any area within the Development, other than temporarily in accordance with the Rules. All vehicles parked within the Development must have current registration and may not be dilapidated, inoperable, or abandoned. The term "commercial vehicles" shall not include sedans or standard size pickup trucks which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

4.21 Parking Enforcement. In addition to the provisions of Section 4.19, above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Condominium Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle.

4.22 Garages and Carports. Each Owner and Resident shall keep the Garage and/or Carport assigned to his or her Unit in a neat, orderly, sanitary and safe condition. Each Garage door shall remain closed except as necessary to permit entry and exit of vehicles or to provide ventilation for individuals working in the garage area. No part of any Garage or Carport shall be converted to other use, such as living quarters or a work shop. In no event shall a Garage or Carport area be used in a way that will preclude the parking of the Owner's or Resident's vehicles within Garage or Carport.

4.23 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Unit shall comply with any Rules adopted by the Board. In no event shall aluminum foil, newspaper, or similar materials be placed in windows.

4.24 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development.

4.25 Connecting Two Units. The connection of two (2) Units is prohibited without prior written approval of the Board.

4.26 Drainage. No Resident shall do any act or construct any improvement which would interfere with the natural or established drainage

systems or patterns within the Development without the prior written approval of the Board.

4.27 Mineral Exploration. No Unit shall be used to explore or remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

## ARTICLE 5

### RENTING OR LEASING

5.1 Requirements for Renting. An Owner renting his or her Unit shall:

(a) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for a minimum term of at least six (6) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents and that failure of the tenant, members of the tenant's household, invitees or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;

(b) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;

(c) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto; and

(d) Notify the Board of the name of each tenant and of the members of the tenant's household.

5.2 Rental of Entire Unit. No Owner shall rent or lease less than the entire Unit. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No Garage, Carport, assigned Parking Space, accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Unit. This Section is not intended to prohibit a resident Owner from sharing his or her Unit with a roommate or other person(s) with whom the Owner maintains a common household or owner-to-owner leases as permitted by Section 5.9, below.

5.3 Restriction on Number of Units Leased or Rented. Except as provided in Sections 5.3.1 and 5.3.3 below, not more than twenty-five percent (25%) (i.e., 18) of the Units within the Development shall, at any particular time,

be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least 51 of the Units in the Development are Owner-occupied. For purposes of this Section 5.3, a Resident of a Unit who is a beneficiary under a trust shall be deemed an Owner-occupant if legal title to the Unit is in the name of the trustee(s) of the trust.

5.3.1 Grandfathered Units. The limitation on the number of permitted rentals as set forth in Section 5.3 shall not apply to any Member who is an Owner of a Unit on the date this Declaration is recorded, but shall apply to any such Unit or Units upon transfer of title to such Unit, such that if the number of Units then being leased or rented is more than the number permitted pursuant to Section 5.3, the Unit shall be sold to an Owner-occupant and not for rental.

5.3.2 Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Unit shall provide such information as the Board may reasonably require to implement the provisions of this Article 5, including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease.

5.3.3 Hardship Waivers. Upon written request of an Owner, the Board shall have the right, but shall not be obligated to, waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship (for instance, a family illness requiring temporary relocation for treatment) provided: (1) each such waiver shall be for a limited term, not to exceed one (1) year; (2) the Owner in question shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Unit as a Resident thereof upon the expiration of such limited term; and (3) such waiver shall be subject to other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

5.3.4 List of Rented Units. The Board shall maintain a list of all Owners currently leasing or renting a Unit, which list shall include: (i) the Owner's name and mailing address; (ii) the address of the rented Unit and the Owner's record date of ownership; and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

5.3.5 Written Request to Rent; Priority List. Any Owner desiring to lease or rent his or her Unit shall submit to the Board a written application for permission to rent to the Board on a form provided by the Board (the "Application"). The Application shall state: (i) the Owner's name, mailing address, and current telephone number(s); (ii) the Unit address and the Owner's record date of ownership; (iii) the proposed lease term; and (iv) such other

information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Unit. The Board shall establish and maintain a priority list of the written requests to rent, organized in the order of date received by the Board.

5.3.6 Review of Application to Rent. Within thirty (30) days after receipt, of the Application, the Board shall review and shall approve or deny the Application. Written notice of the Board's decision shall be transmitted to the requesting Owner and, if the request is denied, the notice shall specify the reason(s) for denial. The Board shall approve the application unless doing so will increase the number of Units leased or rented within the Development to more than the number permitted under Section 5.3, or will otherwise result in the violation of any provision of this Article 5 or any other provision of the Declaration. When the number of Units leased or rented in the Development is less than the number permitted under Section 5.3, the Board shall authorize the Owner who submitted the earliest received written request to rent his or her Unit. When the number of Units leased or rented in the Development equals or exceeds the number permitted under Section 5.3, Owner Applications to rent shall be added to the priority list maintained pursuant to Section 5.3.4.

5.3.7 Reconsideration of Denied Request. If a request to lease or rent is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board. Within ten (10) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

5.3.8 Duration of Authorization to Rent; No Subletting. Subject to the provisions of this Section 5.3, once an Owner obtains permission to lease or rent a Unit, that Owner shall have the right to continue renting that Unit to consecutive lessees or renters for consecutive terms without having to submit or re-submit a request to rent; provided such lease or rental is otherwise in compliance with the provisions of this Article 5 and is without interruption of more than sixty (60) days or, in the case of approved remodeling of the Unit, ninety (90) days and provided, further, that during such interruption in rental the Owner shall not reoccupy the Unit for a period exceeding sixty (60) days. No subletting shall be permitted.

5.3.9 Decision of Board Conclusive. The decision of the Board of Directors in approving or denying a request to rent shall be final and conclusive.

5.4 Association as Third Party Beneficiary. The Owner and the tenant(s) of any Units subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant,

members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section 5.5 below, or under the law, including eviction, to the same extent as the Owner of the Unit. The Association's right to maintain an eviction action shall arise only in the event that; (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Association, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.5 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in performance of any agreement thereunder including but not limited to those set forth in Section 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Association may at any time, upon ten (10) days written notice to such Owner, then (either in person, by agent, or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration, including but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described in this Section 5.5 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Unit, or any part thereof, to do the same or similar acts.

5.6 Owner Responsible for Tenant's Actions; Indemnification of Association. Each Owner leasing or renting a Unit shall be responsible and strictly liable to the Association for the action of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the

provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Unit that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Unit, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Document with respect to such occupants. Any amounts owed pursuant to this Section 5.6 may be assessed as a Reimbursement Assessment.

5.7 Owner Prohibited From Using Common Facilities While Unit Rented. Any Owner who leases or rents his or her Unit and does not still reside in the Development shall not be entitled to use and enjoy any common facility during the period the Unit is occupied by a tenant or tenants.

5.8 Time-Share Arrangements Prohibited. No Unit or Units shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time-sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Unit or Units in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Unit in the Development by any Owner or his or her or its social or familial guests.

5.9 Owner-Owner Leases. Notwithstanding any other provision of the Governing Documents, leases for the use of assigned parking spaces (covered or uncovered) between Owners ("Owner-Owner Lease") is permissible, provided, however, the Owner-Owner Lease is in writing and signed by all parties. There may be an unlimited number of Owner-Owner Leases. A copy of each such Owner-Owner Lease shall be provided to the Association within thirty (30) days of its execution.

## ARTICLE 6

### MAINTENANCE OF PROPERTY

#### 6.1 Association Responsibility.

6.1.1 Common Area. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements,

and landscaping thereon including: private streets; private driveways; walks; Common Area landscaping including the maintenance of trees planted in Common Area (and the roots of any such trees); any perimeter wall or fence; and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies) and lines located outside the boundaries of a separate interest, keeping such property in good condition and repair.

6.1.2 Exclusive Use Common Area. The Association shall provide maintenance, repair and replacement of walking surfaces, framing and railings of Balconies. The Association shall also provide maintenance, repair and replacement of Patios, the exterior surfaces of chimneys extending above the roofline and chimney caps. The Association shall further provide maintenance, repair and replacement of fences and/or walls which form the boundary between Exclusive Use Common and Common Area or the Development property line, including fences and/or walls surrounding a Patio. The Association shall also maintain, repair and replace Carports, Garages and assigned Parking Spaces. The Association shall maintain, repair and replace utility lines located outside the boundaries of the Units. However, the Association shall not be responsible for the repair of damage caused by the conduct or negligence of Residents and may levy a Reimbursement Assessment against the Owner for the costs to repair any such damage. The Association shall further provide maintenance, repair and replacement of sliding glass doors and windows in the course of its maintenance, repair and replacement of Common Area, including building exteriors. However the Association shall not be responsible for the repair and replacement of broken glass. Additionally, the Association shall not be responsible for the repair of damage caused by the conduct or negligence of Residents and may levy a Reimbursement Assessment against the Owner for the costs to repair any such damage. An Owner may replace and/or upgrade a sliding glass door or window after obtaining the approval of the ACC or, if the ACC is not in existence, the Board. However, the Association shall levy a Reimbursement Assessment against the Owner responsible for the upgrade, or a subsequent Owner, for any increased cost to the Association in performing its maintenance, repair and replacement responsibilities, including any costs associated with incorrect installation. Association responsibility for Exclusive Use Common Area does not eliminate Member obligations to maintain Exclusive Use Common Area as set forth herein.

6.1.3 Fire Sprinklers and Chimney Flues. The Association shall provide maintenance of all fire sprinklers in the Development, including those located within the boundaries of individual Units. The Association shall also provide maintenance of all chimney flues in the Development, including periodic chimney sweeping, although Owners shall be responsible for the maintenance, repair and replacement of fireplaces and fireboxes.

6.1.4 Authority for Entry of Unit or Exclusive Use Common Area.

The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

6.1.5 Owner Modifications. In the event an Owner or Resident has modified or added on to a Unit or to a component that would otherwise be the maintenance responsibility of the Association and which increases the maintenance, repair and/or replacement cost to the Association, the Owner shall reimburse the Association for the increased cost, which may be levied as a Reimbursement Assessment. The Association may condition approval of a modification on an Owner assuming responsibility for increased maintenance costs associated with the modification. However, the Owner and his or her successors shall be responsible for payment of increased costs even in the absence of an express assumption of responsibility.

6.1.6 Association Liability. Except as specifically provided in this Section 6.1, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Unit or any improvement therein, except to the extent that the need for such maintenance, repair or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

6.2 Repair of Damage Caused by Wood-Destroying Pests or Organisms. The Association shall bear the costs for the repair and maintenance of Common Area damaged by the presence of wood destroying pests or organisms. However, if any of the maintenance and repair work referred to in this Section is necessitated by the willful or negligent acts of the Owner, members of his or her household, guests, tenants or invitees, the costs of such maintenance or repairs shall be charged to, and paid by, Owner as a Reimbursement Assessment. Any costs of temporary relocation during the repair and maintenance of the Common Area shall be borne by the Owners(s) of the Unit(s) affected.

6.3 Owner Responsibility.

6.3.1 Maintenance of Units. Each Owner shall be responsible for providing maintenance, repair, and replacement of his or her Unit or any portion thereof, as defined in Section 1.39, including any equipment, utility facilities,

fixtures, cabinetry and appliances located therein, and the finished surfaces of the interior floors, ceilings and perimeter walls of the Unit, in a clean, sanitary, workable, and attractive condition, subject to the provisions of this Article 6.

6.3.2 Maintenance of Heating and Air Conditioning Equipment. Each Owner shall be responsible for providing maintenance, repair and replacement of heating and air conditioning equipment serving his or her Unit, including duct work. If the repair to any heating or air conditioning equipment impacts or affects Common Area, the Owner must obtain the written approval of the Board before proceeding with repairs. The provisions of this Section shall not be construed to permit any interference with or damage to the structural integrity of any building.

6.3.3 Maintenance of Water Heaters. Each Owner shall be responsible for providing maintenance, repair and replacement of the water heater serving his or her Unit, regardless of whether it is located in the Unit or Exclusive Use Common Area appurtenant to the Unit.

6.3.4 Exclusive Use Common Area. Except as specifically provided in Section 6.1.2, above, each Owner shall further be responsible for providing maintenance (not including painting and caulking) and cleaning of Exclusive Use Common Area which is appurtenant to his or her Unit, including: the Garage; Carport; assigned Parking Space; and Patio and/or Balcony which has been assigned to such Owner, including any landscaping located within such areas (including any roots of trees planted in such areas). All planting and landscaping in Patios or Balconies shall be installed and maintained by the Resident of such Unit at the Resident's expense in conformity with Rules adopted by and plans approved by the Board.

6.3.5 Compliance with Architectural Review Guidelines. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Unit shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7.

6.3.6 Interiors. No Owner shall do anything in or about his or her Unit that will affect the structural integrity of the building in which it is located; windows shall be covered only in material approved by the Association.

6.3.7 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner the Board may, after written notice to the Owner, and the opportunity

of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment. In the case of an emergency, or if the Owner's failure to perform work presents a safety hazard, the Board may cause such work to be done immediately, without notice to the Owner, and charge the cost thereof to the Owner as a Reimbursement Assessment.

6.3.8 Owner Liability. In the event the need for any maintenance, repair, or replacement of a component which is otherwise Association responsibility is caused by the willful or negligent act or omission of an Owner or members of an Owner's household, tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment. Owners shall be further responsible for any damage to Common Area or the Unit and improvements of another Owner which emanates from an Owner's Unit or Exclusive Use Common Area appurtenant to the Unit. The cost of any maintenance, repair or replacement of damaged components, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, the Owner responsible in the form of a Reimbursement Assessment. This provision shall apply regardless of the applicability of coverage provided by Association-maintained policies of insurance.

## ARTICLE 7

### ARCHITECTURAL CONTROL COMMITTEE

7.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no exterior addition or modification of any kind, including landscaping, shall be made without prior written approval by the Architectural Control Committee ("ACC") or, if there is no Committee, the Board as provided in this Article 7.

7.2 Establishment of Architectural Control Committee.

7.2.1 Members. The ACC shall be composed of three (3) Members in Good Standing appointed by the Board of Directors. The Board shall also appoint one alternate member who may be designated by the ACC to act as a member of the ACC in the absence or incapacity of any ACC member. ACC members shall serve two-year terms subject to the Board's power to remove any ACC member and to appoint his or her successor. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

7.2.2 Vacancies. In the event of a vacancy on the ACC, the Board shall have the full authority to appoint a new member. If at any time there shall

not be a duly-constituted Architectural Control Committee, the Board shall exercise the functions of the ACC in accordance with the terms of this Article 7.

7.3 Duties. It shall be the duty of the ACC to consider and act upon proposals or plans submitted to it pursuant to the terms of this Article 7, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration and act in accordance with *Civil Code* section 1378.

7.4 Meetings, Minutes, Reimbursement. The ACC shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the ACC shall constitute an act by the ACC. The ACC shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The ACC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any ACC function.

7.5 Architectural Review Guidelines. Subject to the Board's approval and the requirements of *Civil Code* section 1357.100 et seq., the ACC may adopt, amend and repeal rules to be known as "Architectural Review Guidelines." The Architectural Review Guidelines may interpret and implement the provisions hereof by providing for any or all of the following:

(a) The standards and procedures for ACC review, including the required content of application and procedures for obtaining preliminary approval of plans;

(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 Development;

(c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case by case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the ACC;

(d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Architectural Control Committee without approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Review Guidelines or the project involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the ACC; and

(e) Notwithstanding the foregoing, no Architectural Review Guidelines shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Review Guidelines and this Declaration, the provisions of the Declaration shall prevail.

7.6 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 7, shall apply for approval by notifying the ACC, in writing, of the nature of the proposed work and furnishing such information and documentation as the ACC or Board may require.

7.7 Fees. The ACC may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.

7.8 Grant of Approval. The ACC shall recommend approval by the Board only if all the following conditions are met:

(a) The Owner shall have complied with the provisions of Section 7.6 above.

(b) The ACC shall find that the plans and specifications conform to this Declaration and to the Architectural Review Guidelines in effect at the time such plans were submitted to the ACC.

(c) The ACC shall determine that the proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing improvements, and as to location with respect to topography and finished grade elevations, with consideration given to preserving views and light.

7.9 Form of Approval. All approvals and rejections of requests for approval shall be in writing and shall be issued by the ACC within sixty (60) days from the date of submission of a complete application to the ACC. Oral approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the Committee's decision and a notice describing the Owner's right to request reconsideration by the Board.

7.10 Appeals. Appeals from decisions of the ACC may be made to the Board, which may elect, in its discretion, to hear the appeal, or, in the alternative, to affirm the decision of the ACC. The Rules shall contain procedures to process appeals pursuant to this Section.

7.11 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.8 and 7.9 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.12 Completion. Unless shorter time is specified in the approval by the Association, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the ACC shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 7.13, below, as though the failure to complete the improvements was a non-compliance with approved plans.

7.13 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article 7, the Owner shall give written notice thereof to the ACC;

(b) Within sixty (60) days thereafter, the ACC, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the ACC finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance;

(c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the ACC 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 non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the ACC. Notice of the hearing date shall be given at least ten (10)

days in advance thereof by the Board to the Owner, to the ACC and, in the discretion of the Board, to any other interested party;

(d) At the hearing, the Owner, the ACC and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment; and

(e) If, for any reason, the ACC fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

7.14 Non-Waiver. The approval by the ACC of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the ACC under this Declaration, 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.

7.15 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Condominium of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any Owner, or anyone deriving any interest in a Unit through him or her, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

7.16 Liability. Neither the Board nor the ACC (or any member thereof) shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of

any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.15, whether or not the facts therein are correct; provided, however, that the ACC (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ACC member). Without in any way limiting the generality of the foregoing, the ACC (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ACC. Every purchaser, by acquiring title to a Condominium, agrees not to bring any action or suit against the Board or the ACC (or any member thereof) seeking to recover any such damages.

7.17 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board, the ACC, or their members as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## ARTICLE 8

### ASSESSMENTS AND LIENS

8.1 Covenant of Owner. Each Owner of a Condominium within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments; (ii) Special Assessments; and (iii) Reimbursement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.2 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.3 Each Assessment Is a Separate Obligation. Each Assessment levied by the Association under this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the

Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.4 Obligation Runs With the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Condominium within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Condominium.

8.5 Owner's Liability After Transfer. After an Owner transfers fee title to any Condominium he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Condominium shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Condominium is recorded in the Office of the County Recorder of Solano County.

8.6 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Condominium to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.6.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Condominium notwithstanding the transfer of record title to such Condominium, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.6.2 Priority of Liens. The priority of all such liens on each Condominium shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Condominium, any sale of such Condominium pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Condominium for succeeding months.

8.7 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the

Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Development.

8.8 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Reimbursement Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

8.9 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated BENICIA MARINA HOMEOWNERS ASSOCIATION OPERATING ACCOUNT and BENICIA MARINA HOMEOWNERS ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Development, as specified in the annual budget. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

8.10 Annual Assessments.

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

8.10.2 Allocation of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Units by dividing the total amount of the Annual Assessment by the number of Units within the Development. Unless the Board shall designate otherwise, the Annual Assessment shall be levied on an annual basis and shall be paid in twelve (12)

equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

8.10.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of the Members.

8.10.4 Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 35 Units), notwithstanding any lower quorum requirement set forth in the Bylaws.

#### 8.11 Special Assessments.

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

8.11.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums in the same manner as Annual Assessments.

8.11.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., at least 35 Units), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.12 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be sent by

first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.13 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Unit if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association, specifically including legal fees. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

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

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

8.16 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with *Civil Code* section 1367.1 or successor statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* section 1367.1 and 1367.4 or successor statutes. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to

above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of *Civil Code* sections 1367.1 and 1367.4 or successor statutes when collecting delinquent Assessments.

8.17 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.18 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.

8.19 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.20 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Condominiums; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Condominium; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

8.21 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 8, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 8.

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

(a) All property dedicated to and accepted by Solano County or other local public authority and devoted to public use;

(b) Any Condominium which is owned by the Association as a result of the Association having acquired such Condominium through foreclosure, provided, however, that such exemption shall be applicable only during the period in which the Association is record Owner of such Condominium; and

(c) All Common Area.

## **ARTICLE 9**

### **ENFORCEMENT**

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

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

9.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

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

9.5 Rights and Remedies of the Association.

9.5.1 Rights and Remedies Are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

9.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing. Any monetary penalty imposed pursuant to this Section shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to *Civil Code* section 1363(g). Each Owner shall be obligated to pay costs incurred by the Association relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Association in any matter permitted by law.

9.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or his or her tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a

continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Association shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments. The provisions of this Section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.8 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board subject to *Civil Code* section 1357.100 et seq., shall be deemed to be a part of the Association Rules provided for, in and constituting a part of the Governing Documents.

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

9.10 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development; (ii) a traffic or fire hazard; (iii) a threat of material damage to or destruction of the Development or any portion thereof; and (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking

violations). Notwithstanding any other provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, 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 the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member, provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

#### 9.12 Dispute Resolution.

9.12.1 Alternative Dispute Resolution. Any dispute other than those listed in *Civil Code* section 1369.520(b) or those related to the power and duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described *Civil Code* section 1369.510 et seq. In the case of any claim, dispute, or controversy which is not otherwise subject to *Civil Code* section 1369.510 et seq., involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

9.12.2 Internal Dispute Resolution. In addition to the ADR provisions of *Civil Code* section 1369.510 et seq., the Association shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or

liabilities under *Civil Code* section 1350 et seq., the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents. The procedure may be invoked by any party pursuant to *Civil Code* section 1363.810 et seq.

9.13 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

9.14 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of his or her household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorneys' fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 8.9 of this Declaration.

## ARTICLE 10

### DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

10.1 Damage to Single Unit. If the Development is damaged by fire or other casualty which it is insured against, and damage is limited to a single Unit, the insurance proceeds shall be paid to the Owner or Owners of such Unit, or the Mortgagees thereof as their respective interests appear, and such Owner or Mortgagee shall use the same to rebuild or repair such Unit. Any such repair or rebuilding shall be subject to the provisions of Article 7. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair.

10.2 Damage to Two or More Units or Common Area. If such damage extends to two (2) or more Units or extends to any part of the Common Area, then and in that event:

10.2.1 Proceeds Equal or Exceed 85% of Reconstruction Costs. If the amount of available insurance proceeds is equal to at least eighty five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, the insurance proceeds shall be paid to the

Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Development, including all Units and the Common Area so damaged unless, within ninety (90) days from the date of destruction seventy five percent (75%) of the Total Voting Power of the Association determine that repair and reconstruction shall not take place.

10.2.2 Proceeds Less Than 85% of Reconstruction Costs. In the event that the amount available from such insurance proceeds is less than eighty five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, repair and rebuilding may nevertheless take place if, within ninety (90) days from the date of destruction, a majority of the Total Voting Power of the Association determines that repair and reconstruction shall take place. If the Members approve repair and reconstruction, the Board shall execute, acknowledge and record in the office of the County Recorder not later than one hundred twenty (120) days from the date of destruction a certificate declaring the intention of the Members to rebuild. Alternatively, the Members by vote of a majority of the Total Voting Power of the Association may elect to sell the Development.

10.2.3 Rebuilding Contract. If a determination is made to rebuild, the Board shall obtain bids from at least three (3) reputable contractors to restore the Development, including all damaged Units and all damaged Common Area, to its condition immediately prior to such damage or destruction. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. The contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.

10.2.4 Costs to Rebuild/Special Assessment. The insurance proceeds shall be disbursed to the chosen contractor according to the terms of the contract. The Association shall levy a Special Assessment to make up the deficiency, if any, between the total insurance proceeds and the contract price for repair and rebuilding. The Special Assessment shall be allocated and assessed in a manner determined by the Board, based on the type and cause of the damage.

10.3 Sale of Entire Development. In the event of the sale of all Units and the Common Area, proceeds from such sale and insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among the Owners and their respective Mortgagees according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. The members of the Board are hereby authorized to execute and deliver, on behalf of all of the Owners, any instruments necessary or required to affect such a sale or sales and

each Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary to affect such sale or sales.

10.4 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

## **ARTICLE 11**

### **AMENDMENT**

This Declaration may be amended by the affirmative vote of Members representing at least a majority of a quorum of the Members (i.e. a “Simple Majority”). The Association may not be dissolved, nor may this Declaration be amended, without the consent of the City of Benicia. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Solano County Recorder.

## **ARTICLE 12**

### **GENERAL PROVISIONS**

12.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration or otherwise.

12.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

12.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

12.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation and this Declaration, the Articles shall

control; and in the case of any conflict between this Declaration and the Bylaws, this Declaration shall control.

12.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

12.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

12.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

12.8 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

12.9 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 all of the real property subject to this Declaration, including without limitation the Units and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period, a written instrument approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Solano County, California.

IN WITNESS WHEREOF, we, the Members of Benicia Marina Homeowners Association, constituting at least seventy five percent (75%) of the total voting power of said Association, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association, in accordance with Article XI, Section 4 of the 1983 Declaration, by means of the signatures of the President and Secretary of the Association, duly authorized by the affirmative vote of at least seventy five percent (75%) of the total voting power of the

Association and the approval of the City of Benicia (in accordance with Article XI, Section 7 of the 1983 Declaration), which the Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Solano County, California.

ADDENDUM

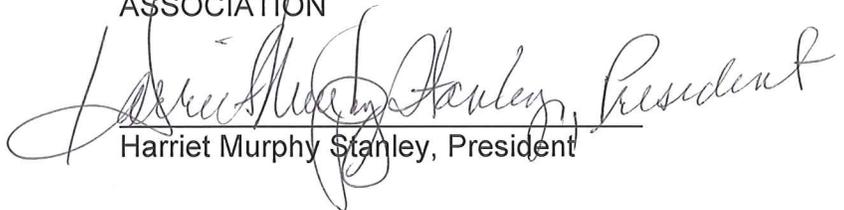
A. On May 26, 2010, members holding 62% of the Association's total voting power voted to amend, restate and supersede the Declaration of Restrictions, Conditions and Restrictions of Benicia Marina Homeowners' Association, recorded on October 13, 1983 in Book 1983, page 85483, et seq., in the Official Records of Solano County.

B. In accordance with California Civil Code § 1356, on February 16, 2011, Judge D. Scott Daniels of the Solano County Superior Court issued an Order in civil action no. FCS038709: (i) dispensing with the requirement in section 10.1.3 of the 2000 Declaration that at least 75% of owners approve any amendment to the 2000 Declaration, and (ii) decreeing that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association be approved by virtue of the number of affirmative votes actually received by the Association in favor of adoption. (the "Order")

C. A true and correct copy of the Order is attached hereto as Exhibit A. IN WITNESS WHEREOF, and in accordance with the provisions of the Order, we, the Members of Benicia Marina Homeowners Association, hereby affirm, approve and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Benicia Marina Homeowners Association, by means of the signatures of the President and Secretary of the Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Solano County, California.

DATED: 4-3-12

BENICIA MARINA HOMEOWNERS  
ASSOCIATION

  
Harriet Murphy Stanley, President

## ACKNOWLEDGMENT

State of California  
County of Alameda )

On April 3, 2012 before me, Justin N. Marquez, Notary Public  
(insert name and title of the officer)

personally appeared Harriet Murphy Stanley,  
who 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.

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

WITNESS my hand and official seal.

Signature



(Seal)



# **EXHIBIT A**

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Attorneys for Petitioner  
BENICIA MARINA HOMEOWNERS ASSOCIATION

FILED  
Clerk of the Superior Court  
FEB 10 2012  
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SOLANO**

IN RE: BENICIA MARINA  
HOMEOWNERS ASSOCIATION,  
  
Petitioner.

Case No. FC5038709

**[PROPOSED] ORDER GRANTING  
PETITION TO REDUCE REQUIRED  
VOTING PERCENTAGE (CIVIL CODE  
§ 1356)**

\_\_\_\_\_  
  
Petitioner, Benicia Marina Homeowner's Association's (the "Association") Petition to Reduce Required Voting Percentage to Amend Declaration of Covenants, Conditions and Restriction (the "Petition") under Civil Code §1356 came on regularly for hearing on February 8, 2012, in Department 6 of the Solano County Court at 8:30a.m. Petitioner appeared by and through its counsel, Jennifer R. Lucas.

Having considered the Petition, the declarations filed herein, the records on file herein, and the oral and documentary evidence adduced at the hearings in this matter, the Court finds:

A. The allegations of the Petition are true and accurate.

1 B. Petitioner gave at least 15 day's written notice of the hearing to all Association  
2 members, and to all others entitled to such notice.

3 C. The balloting on the proposed *Amended and Restated Declaration of Covenants,*  
4 *Conditions and Restrictions of the Benicia Marina Homeowners' Association* (the "Amended  
5 CC&Rs") was conducted in accordance with all applicable provisions of the governing  
6 documents.

7 D. Petitioner made a reasonably diligent effort to permit all eligible members of the  
8 Association to vote on the Amended CC&Rs.

9 E. Owners with more than 50 percent of the votes voted in favor of approving the  
10 Amended CC&Rs.

11 G. the Amended CC&Rs are reasonable.

12 H. The granting of the Petition is not improper for any reason stated in Civil Code  
13 §1356(e).

14 Good cause appearing, IT IS ORDERED that:

15 1. The Petition is GRANTED.

16 2. The Amended CC&Rs shall not be effective until recorded in the Official  
17 Records of Contra Costa County, together with a copy of this Order. Within 60 days after  
18 recordation, Petitioner shall mail a copy of the Amended CC&Rs to each member of the  
19 Association, together with a statement that the Amended CC&Rs have been recorded. On such  
20 recordation, the Amended CC&Rs shall have the same force and effect as if adopted in  
21 compliance with every requirement for amendment imposed by the Association's governing  
22 documents.

23 IT IS SO ORDERED.

24 Dated: February 8, 2012

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By: D. SCOTT DANIELS

Judge of the Superior Court

**EXHIBIT B**



CITY ATTORNEY'S OFFICE  
HEATHER C. Mc LAUGHLIN  
*City Attorney*

August 12, 2008

To Whom It May Concern:

Re: Benicia Marina Condominium Property Interests

This office was asked by the Benicia Marina Homeowners Association, for a formal letter from the City of Benicia clarifying the ownership interest of the property underlying the 69 individual Benicia Marina condominium units.<sup>1</sup> ***On behalf of the City of Benicia, I hereby confirm that, no later than December 31, 2028, fee title to the property underlying the Benicia Marina condominium project (the "Subject Property") will be conveyed by the City for the benefit of the Unit Owners, which are the 69 Sublessees/Purchasers of Condominiums, as tenants in common. The Subject Property shall not revert to the City of Benicia.*** The specific documentation that pertains to this future conveyance is set forth below.

Although there are many agreements that pertain to the Benicia Marina property that stem from the original lease agreement between the City and Cal Boating in 1976 to develop the project, the three agreements listed below clarify the property interests underlying the 69 condominiums that were constructed as part of Phase I. These documents are as follows:

(1) The Option to Purchase Fee Title to Real Property ("Phase I Option to Purchase") dated September 13, 1984 and recorded on December 19, 1984 in Book 1984, Page 109799, Series No. 56451, Solano County Official Records;

(2) The Irrevocable Exercise and Acceptance of Exercise of Option to Purchase ("Phase I Notice of Exercise") dated December 12, 1984 and recorded on December 31, 1984 in Book 1984, Page 113515, Series No. 53274, Solano County Official Records;  
and

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<sup>1</sup> The description of the Benicia Marina Phase I condominium property is as follows:

Lot 1 as shown on that certain map entitled "Benicia Marina - Phase I for Condominium Purposes" filed in the Office of the Solano County Recorder on December 29, 1982 in Book 42 of Maps, at Page 50.

(3) The Restated and Amended Benicia Marina Lease Agreement (Phase One Condominiums Parcel) executed on April 22, 1990 ("Lease"), which is not recorded.

To summarize very briefly, the Phase I Option to Purchase, expressly acknowledges the parties' interest in conveying "to the condominium unit purchasers a fee interest in and to all of the undivided portions of the Subject Property upon which the condominium units are constructed" at some point in the future (see Recital, Paragraph G), and provides the means to exercise the option no later than an operative date of December 31, 2028 (see Section 5 (b)).

The option to purchase was exercised in December 1984 and was officially recorded in the Phase I Notice of Exercise. It specifically cites the construction of the sixty-nine (69) condominiums and the intent of the option to be timely exercised "for the benefit of the Developer and the Sublessee/Purchasers of the Condominiums (see Recitals, paragraphs C & E). Section 4 states that the acceptance of the City of the Developer's exercise of the option is irrevocable. Section 5 provides that the "Operative Date" for the conveyance shall be no later than December 31, 2028, even if the City has not paid all principal and interest to Cal Boating.

The Restated and Amended Lease, which was executed several years later in 1990, specifically confirms that all obligations of the tenant have been performed in order for the future conveyance of the property to be made:

Tenant has performed all obligations of Tenant under the Phase I Option to Purchase and the Phase I Notice of Exercise, and the conveyance by Landlord [City of Benicia] to Tenant for the benefit of Unit Owners of fee title to the land underlying the Phase I Condominium Project awaits only Landlord's payoff of its loan obligations to Cal Boating on or before the Operative Date. (See Recital, paragraph E).

At the time the Restated and Amended Lease was signed, Southern California Savings and Loan Association was the tenant. However, it assigned its interests in the Lease and all related documents to The Butterfield Company, LLC, per the Memorandum of Assignment of Acceptance recorded June 30, 1995 as Instrument No. 1995-00038102, who is the current "Developer" of the property.

It is therefore clear from the three documents cited above, that the City of Benicia will convey fee title of the property underlying the 69 individual Benicia Marina condominium units no later than December 31, 2028. It appears from Section 5 of the Notice of Exercise, that the City shall either convey the property to the respective Sublessees/Purchasers (condominium unit owners) or alternatively, to the "Developer"

August 12, 2008

Page 3

[currently The Butterfield Company, LLC, aka Butterfield Ranch Company, LLC] who shall then convey fee title to the respective Sublessees/Purchasers.<sup>2</sup>

If you have any further questions, please feel free to call my office at (707) 746-4216.

Very truly yours,



Heather C. Mc Laughlin  
City Attorney  
The City of Benicia, California

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<sup>2</sup> Our office has been informed that when a condominium within the Benicia Marina project is purchased, the purchaser enters into a Condominium Sublease, Agreement to Convey and Grant Deed to Interest in Improvements, with the developer that assigns the developer's property interest in the underlying property to the condominium unit owner.