

RECORDED AT THE REQUEST OF: CLIPPER COVE  
OWNERS ASSOCIATION AFTER RECORDATION RETURN TO: Beth A. Grimm, A Professional Law  
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RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

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CLIPPER COVE OWNERS ASSOCIATION

AMENDED CC&Rs - April 1999  
RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)

# CLIPPER COVE OWNERS ASSOCIATION

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RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
  
CLIPPER COVE OWNERS ASSOCIATION

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THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SUPERSEDES ALL PRIOR RECORDED DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS AND SUPPLEMENTS OR AMENDMENTS THERETO, ALL OF WHICH WERE RECORDED IN THE OFFICIAL RECORDS FOR ALAMEDA COUNTY, AS FOLLOWS:

Declaration of Covenants, Conditions, and Restrictions recorded January 17, 1980 as Instrument No. 80 009727; and any Declarations of Annexation for the tracts affected and any and all prior and subsequent Amendments to that Declaration of Covenants, Conditions, and Restrictions.

The undersigned hereby certify that they are the President and Secretary, respectively of the association, CLIPPER COVE OWNERS ASSOCIATION, and are authorized by the Project Board to execute this Restated Declaration.

This development is a planned development as defined by Civil Code § 1351(k) to be administered by the Association named above, for the subdivisions and properties more particularly described as:

"All that certain real property situated in the City of Alameda, County of Alameda, State of California, more particularly described as:

Each and every Lot (Lots 1-66) and the Common Area (Lots A and B) as shown upon the map entitled "Tract 4120", which Subdivision Map was filed of record in the Office of the County Recorder on December 15, 1978, in Book 108 of Maps, pages 17-23, inclusive, Alameda County Records."

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Each and every Lot and the Common Area as shown upon the map entitled "Tract 4307", which Subdivision Map was filed of record in the Office of the County

Recorder in Book 122 of Maps, pages 84-87, inclusive, Alameda County Records."

Each and every Lot and the Common Area as shown upon the map entitled "Tract 4361", which Subdivision Map was filed of record in the Office of the County Recorder on February 6, 1981, in Book 126 of Maps, pages 1-4, inclusive, Alameda County Records."

WHEREAS, the Association has heretofore been incorporated under the laws of the State of California as a non-profit mutual benefit corporation, CLIPPER COVE OWNERS ASSOCIATION, INC. for the purposes of exercising the functions hereinafter described; and,

WHEREAS, Covenants, Conditions, Restrictions, reservations, servitudes, easements and liens which affect the subject properties and which provide for amendment have heretofore been recorded; and,

WHEREAS, the requisite percentage of Lot Owners have approved this Restated Declaration of Covenants, Conditions, and Restrictions; and,

WHEREAS, this Corporation hereby establishes these Restated Covenants, Conditions and Restrictions for the benefit of the Owners of all Lots at CLIPPER COVE.

NOW, THEREFOR, this Association and Owner/Members hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner and each successor in interest of such Owner. Each and all of the Covenants, Conditions and Restrictions, limitations, easements uses and obligations contained herein shall be deemed to be and shall be construed as equitable servitudes enforceable by any of the Owners of any Lot in the subject property against any other Owner(s) of the subject property. CLIPPER COVE Owners and all heirs, successors and assigns are also subject to the Declaration of Covenants, Conditions and Restrictions for the Community of Harbor Bay Isle, and the terms and conditions therein shall prevail over any contrary terms and provisions in this Restated Declaration.

#### ARTICLE I DEFINITIONS

Section 1. "Alternative Dispute Resolution" (ADR), shall mean resolution of a dispute by means other than (alternative to) litigation, such as arbitration, mediation, or neutral evaluation.

Section 2. "Articles" shall mean the CLIPPER COVE Articles of Incorporation currently in effect.

Section 3. "Association" shall mean and refer to CLIPPER COVE OWNERS ASSOCIATION, a California non-profit mutual benefit corporation or any successors or assigns organized for the purpose of managing this common interest development, unless the word "Association" is preceded with the designation "Community" Association or another named Association.

Section 4. "Board" (or "Project Board") shall mean the governing body of this Association, duly appointed and elected pursuant to this Restated Declaration and Bylaws currently in effect, unless the reference to "Board" is otherwise described.

Section 5. "Building" shall mean to the building for dwelling unit, located upon a Lot.

Section 6. "Bylaws or Amended Bylaws" shall mean the CLIPPER COVE Bylaws currently in effect.

Section 7. "Community" shall mean the Community of Harbor Bay Isle, being all of the real property subject to the Community Declaration of which the project is a constituent part.

Section 8. "Community Architectural Committee" shall mean the Community Architectural Committee established pursuant to Article VIII of the Community Declaration.

Section 9. "Community Assessments" shall mean the assessments levied by the Community Association pursuant to Article N of the Community Declaration.

Section 10. "Community Association" or "Master Association" the Community of Harbor Bay Isle Owners' Association as defined in the Community Declaration.

Section 11. "Community Board" shall mean the Board of Directors of the Community Association established under Paragraph 3.6 of the Community Declaration and elected and acting pursuant to the Community Declaration, the Community Articles and Community Bylaws.

Section 12. "Community Bylaws" shall mean the Bylaws for the Community Association duly adopted by the Community Board.

Section 13. "Community Common Area" shall mean all real property in which the Community Association owns an interest for the common use and benefit of the Community Members, their lessees, guests, invitees or patrons as more particularly specified in Paragraph 2.2 of the Community Declaration. The Community Common Area may include interests held by lease or easement as well as estates in fee.

Section 14. "Community Member" shall mean any person or entity holding membership in the Community Association.

Section 15. "Community Rules" shall mean the Rules adopted by the Community Board pursuant to Section 3.3 of the Community Declaration.

Section 16. "Declaration" or "Restated Declaration" or "CC&Rs" as used herein shall mean and refer to the Covenants, Conditions and Restrictions and all other provisions herein set forth in this entire document, as may from time to time be amended or restated, unless the words are described with reference to the Master Association.

Section 17. "Dwelling Unit" shall mean a structure situated upon a Lot designed or arranged for use and occupancy as a residence.

Section 18. "Governing Documents" shall mean the Restated Declaration and any other documents regulating the Association, including the Articles of Incorporation, the Second Amended Bylaws, and all rules and regulations of the Association, which are in effect, and which govern the operation of the common interest development and the Association.

Section 19. "Maintenance", as provided by the Association or any Owner under their respective obligations as set forth in Article VII, means the exercise of reasonable care to keep buildings, driveways, landscaping and other related improvements and fixtures in a state similar to their original condition or approved modifications.

Maintenance of landscaping means the exercise of regular fertilizing, irrigation and other garden management practices necessary to promote a healthy environment for optimum plant growth.

Section 20. "Member" means and refers to every record owner of a Lot, which is subject to assessment. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

Section 21. "Mortgage" means and refers to a Lender or holder of deed of trust. "First Mortgage" means holder of first deed of trust.

Section 22. "Owner" means and refers to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation (e.g., lenders and deed of trust/mortgage holders).

Section 23. "Project" shall mean CLIPPER COVE.

Section 24. "Project Architectural Committee" shall mean the Committee created pursuant to Article V of this Declaration.

Section 25. "Project Association" shall mean CLIPPER COVE Owners Association, the non-profit mutual benefit corporation described herein, including its successors and assigns.

Section 26. "Project Board of Directors" shall mean the Board of Directors of CLIPPER COVE.

Section 27. "Project Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners, as described above, and shall include all facilities and improvements located thereon.

Section 28. "Project Rules" shall mean the Rules from time-to-time adopted by the Project Board.

Section 29. "Properties" means and refers to the real property described above in CLIPPER COVE, which includes all Common Area and Lots and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 30. "Residence" shall mean a building or buildings designed for residential use and related ancillary uses such as garages, carports or storage sheds.

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Section 31. "Residence Lot" or "Lot" means and refers to each and every Lot shown on the recorded Map for the subject subdivision except Common Area (Lot 48).

Section 32. "Residential Use" shall mean occupation and use of a dwelling unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations.

Section 33. "Subject Property" shall mean the real property described on Pages 1 and 2.

## ARTICLE II PROPERTY RIGHTS AND EASEMENTS

Section 1. Owners' Rights of Enjoyment and Easements. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall pass with the title to every Lot, subject to the following provisions:

- (a) The Project Common Area shall be owned and regulated by the Project Association.
- (b) Rules & Regulations. The Association shall have the right to adopt reasonable rules and regulations regarding use of the common area and facilities including limiting the number of guests and charge reasonable fees for use of the facilities, and to establish reasonable monetary penalties for violations of these Restated CC&Rs and the rules.
- (c) Suspension of Voting Rights and/or Use of Facilities. The right of the Association to suspend the voting rights and/or rights to use of any recreational facilities of an Owner or their tenant, guest or family member:
  - (1) For any period during which any assessment against his/her Lot remains unpaid; and,
  - (2) For any reasonable period of time the violation of any of the published rules and regulations continues.

Any of the above disciplinary action requires reasonable notice and an opportunity to be heard by the Project Board of Directors of the Association (as more fully stated in Article IX of the Amended Bylaws).

Section 2. Dedication or Granting of Easement Over Property or Transfer of Common Area Property. The Association has the right to dedicate or grant an easement or transfer all or any part of the Common Area to any public agency, authority or utility, or any maintenance or assessment district. If the utility service is necessary no membership vote is required. Fifty-one percent (51%) of the members must approve any easement or transfer to a third party that involves a purpose other than a utility or service deemed necessary by the Project Board.

Section 3. Easements for Encroachment. Each Lot is declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building or any other similar cause, including any encroachment due to building or balcony overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an

Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event any Community Common Area improvement, including structures or any portions thereof, roof overhangs and fences as originally constructed, encroaches upon any Lot or Project Common Area, there shall be an easement for the location and maintenance of such encroachment for the Community Association so long as such encroachment exists.

Section 4. Project and Community Association Easements. There are reserved to the Project Association, the Community Association and their duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the respective Associations as set forth in this Declaration, the Community Declaration, or in the Bylaws, Articles and Rules of the respective Associations and the Project Architectural Committees of either. Specifically, but without limiting the generality of the foregoing, there are hereby reserved to the Declarant hereunder and to Harbor Bay Isle Associates, the Community Association and the Project Association easements over the Lots and Common Area within the Subject Property for the Community communication system, the Community bicycle and pedestrian circulation system, utility line facilities, ingress and egress rights for the benefit of the Community Association in order for it to carry out its functions and duties as set forth in the Community Declaration, and access rights in favor of all applicable municipal agencies for the maintenance, repair and enforcement of their applicable duties or obligations with respect to the Subject Property.

Section 5. Reciprocal Appurtenant Easements. Some Lots may be served by utilities and drainage facilities, which are located on, or under Lot or Lots. Appurtenant easements have been created and exist for the use and benefit of the respective Lots served, on, under and across the Lots burdened for ingress and egress for pedestrians and vehicles, utility, telephone, sewer and drainage pipes, sprinkler systems, lines, conduits and culverts and utility meters. The specific location of each such utility easement shall be determined by the physical location of the improvements thereon and thereunder installed constructed and completed at the time of the first conveyance. All of such telephone lines, pipes, conduits and culverts and sprinkler systems shall be cared for, repaired and maintained by the Project Association or the respective utility. No dwelling unit, structure, planting or other material of any kind shall be built, erected or maintained upon any such easement, reservation or right-of-way which may damage or interfere with the installation and maintenance of utilities or which may damage, interfere with or change the direction of flow of drainage facilities. Said easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, and to persons erecting, constructing and servicing such utilities and quasi-utilities, all of whom shall have the right of ingress and egress thereto and therefrom and the right and privilege of doing whatever may be necessary in, under and upon such locations to carry out any of the purposes for which said easements, reservations and rights-of-way have been granted.

Section 6. Drainage Easements. A non-exclusive drainage easement over and through a portion of the Lot adjacent below to the side-yard of such Lot for the purpose of accommodating drainage waters through "established drainage" channels has been created for the benefit of the Owner of each Lot. The purpose of such drainage easement is to require the Owner of the Lot adjoining the sideyard of an adjacent Lot to accept run-off water from such sideyard area.

Section 7. Lagoon Bank Maintenance Easement: All Lots of the Project are subject to a Lagoon Bank Maintenance Easement as shown on the Map in favor of the Community Association. The Lot Owners of said Lots shall not undertake any activity or construct or install any improvements, structures, or landscaping on the area of the Lot subject to said easement which interferes with the right and responsibility of the Community Association to maintain the Harbor Bay Isle Lagoon or the banks adjacent to the Lagoon.

Section 8. Easement for Maintenance: Non-exclusive easements appurtenant to each Lot have been established and are reserved over and across the Lots which adjoin said Lot, for limited access over and across said adjoining Lots by the Owner of the Lot and his agents for undertaking repair and maintenance of the building and other improvements situated on the Lot. In exercising the right of entry upon the easement area, the Owner agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area and shall limit such access and entry to only that essential for the undertaking of repair and maintenance.

Section 9. Right of Entry on Lot. Upon twenty-four (24) hours written notice (emergencies excepted) and during reasonable hours, any member of the Community and/or Project Architectural Committee(s) or any member of the Project Board or Community Board or any authorized representative of any of them, shall have the right to enter upon and inspect any building, site, lot or parcel and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Restated Declaration and the Rules have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of the entry.

Section 10. Easement for Side and Rear Yards: There are hereby reserved exclusive easements over each of the Lots for the purpose of establishing rear or side yards for each of the Lots. Said easements shall be reserved and granted on the individual grant deeds to the owners who acquire the Lots and shall be shown and described on each of said grant deeds as the areas designated "Private Service Easements (P.S.E.)" and "Yards." The area of each such easement shall be used by the Owner of the dominant tenement only for patio, garden and recreational purposes, private utility facilities, storm drainage, roof overhangs and building maintenance and each such Owner shall have the right to enter upon the area of said easement for said purposes. The Owner of the dominant tenement shall have the right to (i) construct upon the easement area an uncovered concrete patio and a wall or fence, not exceeding six feet (6') in height, and (ii) establish and maintain a landscaping and irrigation system thereon; provided, such patio, wall or fence and system shall be first approved by the Community Architectural Committee. Said Committee may, in its discretion, permit covered patios not violative of governmental rules, regulations or ordinances affecting the property. The easement area and every part thereof, including the drainage system originally established, as part of the grading and original construction upon the easement area shall be maintained in a neat and orderly condition by the Owner thereof. The Owner of the adjoining property (servient tenement) shall maintain the structural wall of the dwelling. No fence or wall other than as provided in this Section, or as originally constructed, shall be constructed within, upon or adjacent to the easement area; provided, however, that a rear-yard fence approved by the Community Architectural Committee may intersect with the easement area. The neighboring Owner (of the servient tenement) shall have and retain right of entry as needed to perform maintenance, and to service and/or repair utility meters, and shall have reasonable rights of entry as needed to perform maintenance, and to cross-over the easement area, which otherwise shall be exclusive to the Owner with the easement area:

The Owner of the servient tenement shall have the right at all reasonable times to enter upon the easement area, including the right to cross over the dominant tenement for such entry, in order to perform work related to the use and maintenance of the servient tenement, and in order to read, service and/or repair utility meters; and

The right of drainage over, across the neighboring property (as is reasonable), upon the servient tenement, the right to maintain eaves, fences and appurtenances thereto and the portions of any structure upon the servient tenement as originally constructed or as constructed pursuant to the plans and specifications approved by the Community Architectural committee; and

- In exercising the right of entry upon the easement area as provided for above, the Owner of the servient tenement agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, the Owner of the servient tenement shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the easement area for authorized purposes, within an area of three feet (3') from the structural wall of the servient tenement.

Section 11. Dock Easements: Each Lot situated adjacent to the Harbor Bay Isle Lagoon shall be entitled to a grant of a Dock Easement by the Declaration as an easement appurtenant to said Lot. Said Dock Easement shall be for the exclusive use of Owner of said Lot for the installation of a dock and operation and mooring of such boats as are allowed by the Community Association. Any dock so installed within said Dock Easement by a Owner shall conform to the designs for such docks established by the Community Association. The use of such docks shall conform and is limited by any rules and restrictions adopted by the Community Association and/or the Project Association.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Record Owner of a Lot who is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

When any Lot is sold, the membership hereby created shall transfer to purchaser.

Section 2. Voting of Members. The Members shall have voting rights as set forth in the Amended Bylaws, with one vote for each Lot owned.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Project Association:

- |  |                                     |
|--|-------------------------------------|
| (a) Regular Assessments                                  | (d) Reimbursement Assessments       |
| (b) Special Assessments                                  | (e) Enforcement Assessments         |
| (c) Community Assessments<br>(described in Article VIII) | (f) Foundation Leveling Assessments |

**Project Assessments:** Project Assessments shall be fixed, established and collected from time to time as hereinafter provided. With the exception of Enforcement Assessments, all other assessments, together with interest, late charges and costs of collection, shall be a charge on the land and shall be a lien upon the Residence Lot against which each such assessment is made.

**Community Assessments:** In addition, each Owner shall be obligated to pay Community Association Assessments which are enforceable pursuant to Paragraph 4.9 of the Community Declaration. Project and

Community Assessments may be collected contemporaneously. If and to the extent the Project Association fails to collect project assessments and use the funds collected to maintain the properties and manage the Association as herein provided, the Community Association may elect to preempt the Project Association to fulfill those duties.

No Owner shall be relieved of an obligation to pay assessments or any part thereof by reason of his/her failure to use the common area and facilities.

Section 2. Purpose of Regular Assessments. The regular assessments levied by the Association shall be used for the improvement, maintenance and protection of the Common Area and to fulfill all obligations of the Association specified in this Restated Declaration. Said assessments shall include and the Association shall acquire and pay for out of the funds derived from said annual assessments the following:

OPERATING FUNDS (Current Maintenance and Operation Account)

- (a) Any necessary utility service and maintenance of sewer systems, pipes and lines in the Common Area that are not maintained by other entities, public or private.
- (b) Maintenance and repair obligations of the Association pursuant to Article VII herein.
- (c) Services, maintenance, repairs, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of the governing documents which, in the opinion of the Association's Project Board, are necessary or proper for the operation of the Association, the Common Area, or for the enforcement of these restrictions.

RESERVES (Deferred Capital Replacement Account)

Reserves will be set aside for the major components for which the Association is responsible including the repair, replacement and other related costs. Funds designated, as reserves shall not be spent on regular maintenance or operations costs unless the Project Board deems it necessary and complies with all currently existing statutes related to use of reserve funds. Reserves include the Foundation Leveling Fund described in Article VIII.

NO TRANSFER OF FUNDS TO INDIVIDUALS

Upon sale or transfer of any Lot, no funds from any existing association accounts shall be transferred in connection with the sale or transfer. In other words, all assessments collected and held by the Project Association are for the benefit of and use of the association for all members, and are not segregated, held, nor considered transferable by the Project Association for the benefit of any individual transferring his or her Lot.

Section 3. Maximum Regular Assessment Increases. If the annual/regular assessments set pursuant to the proposed budget prove inadequate for unforeseen reasons, that assessment may be reconsidered and increased at any time during the fiscal year, so long as any increase approved by the Project Board (without a vote of the membership) does not in the aggregate (when added to any previous increase) exceed twenty percent (20%) of the previous year's assessment.

As provided in Civil Code § 1366, the Project Board may not for any fiscal year increase the regular assessments more than twenty percent (20%) without a vote of the membership. For any increase exceeding twenty percent (20%), the Project Board must obtain the approval of a majority of a quorum of members (a quorum being fifty-one percent [51%]). These limits do not apply in an emergency situation as defined by Civil Code § 1366. Regular assessments are subject to collection under Sections 11 and 12 below.

Section 4. Special Assessments. As provided by Civil Code § 1366, the Project Board may not for any fiscal year impose special assessments for any lawful purpose related to the obligations or duties of the Project Board or Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses for that fiscal year. For any special assessment that exceeds five percent (5%), the Project Board must obtain the approval of a majority of a quorum of members (a quorum being fifty-one percent [51%]). These limits do not apply in an emergency situation as defined by Civil Code § 1366. Special assessments are subject to collection under Sections 12 and 13 below.

Section 5. Reimbursement Assessments. The Project Board may make a reimbursement assessment against any Lot and the Owner thereof for the cost and expenses, including a reasonable attorney's fee incurred by the Association, to perform or enforce any responsibility or duty of such Owner under this Restated Declaration that the Owner fails to perform, in violation of the governing documents. Owner shall first be given notice of the obligation and a reasonable time in which to cure the deficiency or violation. Any reimbursement assessment shall be payable within thirty (30) days after notice to the Owner, or at a later date as may be specified by the Project Board. Reimbursement assessments are subject to collection under Sections 11 and 12 below.

Section 6. Enforcement Assessment (Fine). The Project Board may levy an enforcement assessment upon an Owner and his Residence Lot for failure to comply with the governing documents. No enforcement assessment may exceed \$100.00 per violation. The same act may constitute more than one violation if the act is ongoing or continuous. An Enforcement Assessment may be levied after notice and an opportunity for a hearing before the Project Board under Article XI of the Bylaws. The Project Board may establish reasonable rules regarding repeated Enforcement Assessments for continual or recurring violations and shall adopt and circulate a policy to the owners setting assessment amounts to be charged. These assessments are not subject to collection by lien/ foreclosure under Section 12 or 13 below. All other remedies are available.

Section 7. Uniform Rate of Assessment. Regular and special assessments as set forth in Sections 2 through 4 must be fixed at a uniform rate for all Lots and may be collected monthly, or other basis. Assessments as specified in Sections 5 and 6 related to Reimbursement and Enforcement assessments shall be charged on an individual basis.

Section 8. Date of Commencement and Collection of Regular Assessments. Due Dates. The Project Board shall fix the amount of the regular assessments and send notice to the homeowners not less than thirty (30) nor more than sixty (60) days (to coincide with sending the pro forma budget to Members) before the beginning of each fiscal year or within any other timeline required by law. The due date(s) and payment periods shall be established by the Project Board.

Section 9. Certificate of Assessments Due. The Association shall, upon demand, from any party that can show legal entitlement to that information and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and how much is due if the account is not current.

Section 10. Capital Improvements. The Project Board may propose, or a majority of the Owners by petition may propose a new capital improvement on the Common Area. If the Project Board approves the improvement, it shall obtain at least two firm bids (at least two or three) and present the bids to the Owners for approval if the cost of the improvement exceeds 5% of the budgeted gross operating expenses for the fiscal year. (If the cost is less than 5%, member approval is not required and the Board may approve the improvement.) Once necessary approval is obtained, the Project Board shall arrange for construction of the improvements.

Section 11. No Offsets. All assessments are due and payable in amounts specified. There shall be no offsets permitted for any reason including, without limitation, any claim that the Association is not properly exercising its duties of maintenance or enforcement.

Section 12. Effect of Nonpayment of Assessments/Remedies of the Association. If any assessment is not paid within thirty (30) days after the due date, a late charge pursuant to Civil Code §1366 may be imposed. Interest may accrue and be charged on all sums (including assessments, penalties and reasonable costs of collection) which are more than thirty (30) days overdue, at the rate of up to twelve percent (12%) per annum, the maximum authorized by California law. The Project Board has discretion to impose late fees and/or interest established by Board policy. In the event of non-payment of any assessment and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows:

- (a) By suit or suits at law to enforce each such assessment obligation. Any request for judgment in any such action shall include a sum for expended attorney's fees and related costs.
- (b) BY lien and (judicial or nonjudicial) foreclosure pursuant to Civil Code §1367 and related statutes. Upon recordation of a claim of lien by the County Recorder, the lien shall attach and become effective as a "continuing" lien covering all subsequent delinquencies and attendant penalties. Any lien may be foreclosed by the Association, its attorney, or any other person authorized by the Association, either by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage under power of sale. Upon sale, a certificate of sale shall be executed and acknowledged by an authorized officer of the Association or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner.

The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien or pursue both remedies without waiving the right to either remedy until the assessment, including all of the assessments, late fees, interest collection costs and attorneys fees have been fully paid and satisfied. The Association shall have the power to bid for the Lot at the sale under its power of sale or at any court foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 13. Lien Notice Requirements. In order to comply with the requirements of Civil Code §1367, the following must occur:

- (a) Before the Association may place a lien on an Owner's separate interest to collect past due assessments, the Association must notify the Owner in writing by certified mail all of the following:

- The itemized statement of the charges owed by the Owner, including assessments owed, late charges, method of calculation and attorneys fees.
- The collection practices used by the Association, including the right of the Association to reasonable costs of collection.
- If fines are charged, the Association's policy/schedule of fines.

(b) The Association must apply payments received on the delinquent assessment account first to the principal owed, and when the principal is paid in full, the remaining portion of the payments made may be applied to interest and/or collection expenses.

(c) The Association must notify the Owner when a lien is recorded, by sending a copy of the recorded lien to the Owner by certified or registered mail within ten (10) calendar days after the lien is recorded.

(d) The Association is prohibited from treating monetary penalties (fines for disciplinary action) as assessments which may become a lien against a member's interest which is enforceable by a foreclosure sale in the governing documents for the Association so long as Civil Code §1367 prohibits it.

(e) The Association must wait at least thirty (30) days after a lien is recorded to begin foreclosure proceedings.

Section 14. Homeowner May Request ADR For Assessment Disputes. Assessment disputes are generally exempt from Civil Code §1354 which provides a process for resolving matters through alternative dispute resolution (ADR). However, a homeowner may lift the exception for association assessments through the following steps:

(a) Homeowner pays in full to the Association all of the assessments in dispute, late charges, interest, and all fees and costs associated with preparation and filing of a lien (including mailing costs, and attorneys fees not to exceed \$425.00).

(b) This payment must be made along with a written statement of protest from the homeowner which is mailed to the Association by certified mail, not more than 30 days after the lien is recorded.

(c) Upon receipt of such a written protest, the Association must inform the Owner of the right to resolve the matter through ADR as set forth in Civil Code § 1354, a civil action or any other procedures that the Project Board might establish to resolve the matter.

(d) A homeowner may use this exception for ADR for assessment disputes not more than two (2) times in any single year and not more than three (3) times in any five (5) calendar years.

(e) If through ADR it is determined that some of the assessments are levied in error, the homeowner is entitled to recovery of interest in a reasonable amount on those assessments.

Section 15. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall

be subordinate to the lien of any first mortgage, meaning the first mortgage takes priority. A sale or transfer of any Lot (not by foreclosure) to the mortgagee/Lender shall not affect the assessment lien. However, the

transfer by foreclosure of any Lot pursuant to a senior mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. The Owner incurring the delinquencies shall still be personally liable for all amounts due.

ARTICLE V  
PROJECT ARCHITECTURAL AND LANDSCAPE DESIGN AND CONTROL  
COMMUNITY ARCHITECTURAL APPROVAL

Note: Article VIII, Section 8. 1, of the Declaration Covenants, Conditions of The Community of Harbor Bay Isle recorded June 8, 1977 as Instrument No. 77-110988 in the Official Alameda County Records (or any successor provision duly adopted by The Community of Harbor Bay Isle) controls. It preempts and supersedes the following provisions so long as the Community• retains control over architectural review. Pursuant to the authority vested in the Community by said Declaration, any or all of the architectural control functions over the real property within the Project may be delegated to the Project Association. Thereafter, said authority remains revocable by Resolution of the Community Board. Any functions that are so designated shall be subject to the following:

Section 1. Project Architectural Committee. The Project Architectural Committee (PAC) shall consist of not less than three (3) members, appointed by the Project Board, plus one alternate member who shall be designated by the Committee. Members appointed to the PAC by the Project Board shall be members of the Association. The members of the Committee shall not be entitled to any compensation for services performed. The Project Board shall have the power to change the membership of the Committee or to change any of its powers and duties. If the Project Board is unable to find members to serve, The Project Board may serve as The Project Architectural Committee, unless the Community Architectural Committee is performing the functions.

Section 2. Architectural Approval. No building, fence, wall, balcony, screen, patio, patio cover, tent awning, improvement or other structure of any kind on or about the exterior to any Unit or within the Common Area shall be commenced, erected or maintained unless the same has been approved in writing by the Project Architectural Committee (PAC). No alteration of any kind to the fencing, the landscaping of the Common Area or the front or sideyard landscaping setbacks, or changes to the exterior of any Unit, including without limitation alteration in color or material, may be commenced or completed until the same has been approved in writing by the Project Architectural Committee (PAC). Any increase in costs for maintenance performed by the Association which results from any exterior improvement or alteration of a Lot shall be the responsibility of the Owner of the Lot affected (through reimbursement under Article IV herein).

Section 3. Application for Approval of Improvements: Basis for Approval of Improvements. Any Owner proposing to perform any work of any kind whatever which requires the prior approval of the Project Architectural Committee, pursuant to this Declaration, shall apply to such Committee for approval of the proposed work by notifying the Committee in writing on the nature of the proposed work and furnishing such information as the Committee may require. The Architectural Committee shall consider granting the requested approval only if:

- (a) The Owner has complied with the provisions of this Section 5;

- (b) The Committee finds that the plans and specifications conform to this Restated Declaration, the Committee Declaration and to the Project and Community Architectural Committee Rules in effect at the time such plans are submitted to the Committee; and .
- (c) The members of the Committee, in their sole discretion, determine that the proposed improvements would be compatible with the standards of the Community and the purposes of this Restated Declaration and the Community Declaration as to quality of workmanship and materials, the harmony of external design with the existing structures, and the location with respect to topography and finished grade evaluations.

Section 4. Form of Approval. All approvals given by the Committee under Section 5 shall be in writing. The PAC shall approve or reject the application of an Owner to improve or alter his Unit within sixty (60) days of receipt of such application, or notify the Owner if there are any delays (such as an incomplete application or need for further information) and why.

Section 5. Proceeding With Work. Upon receipt of approval from the Committee pursuant to Section 4 above, the Owner, as soon as practicable, shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations so approved, said commencement to be, in all cases, within one (1) year from the date of such approval. If the Owner fails to comply with this Section, any approval given pursuant to Section 4 above shall be deemed revoked unless the Committee, upon written request of the Owner made prior to the expiration of said one (1) year period, extends the time for such commencement. No such extension may be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

Section 6. Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so 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, the Committee shall notify the Project Board of such failure, and the Project Board shall proceed in accordance with the provisions of Section 9 below as though the failure to complete the improvement were a non-compliance with approved plans.

Section 7. Inspection of Work. Inspection of approved work and correction of defects therein shall proceed as follows:

- (a) Upon the completion of any 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, the Owner shall give written notice thereof to the Committee.
- (b) Within sixty (60) calendar days after receipt of such notice, the Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Committee finds that such 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) calendar day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner fails to remedy such non-compliance within thirty (30) calendar days from the date of his receipt of the notice of non-compliance, the Committee shall notify the Project Board in writing of such failure. The Project Board shall then set a hearing date before the Project Board regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Project Board by the Project Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Project Board to the Owner, the Project Architectural Committee and, in the discretion of the Board, to any other interested party.

(d) At the hearing, the Owner, the Project Architectural Committee and, in the Project Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Project Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Project Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) calendar days from the date of the Project Board's ruling. If the Owner does not comply with the Project Board's ruling with such period or within any extension of such period as the Project Board, in its discretion, may grant, the Project Board, at its option, may either remove the non-complying improvement or otherwise remedy the non-compliance and the Owner shall reimburse the Project Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Project Association, the Project Board shall levy a Reimbursement Assessment against such Owner pursuant to Article IV above.

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

Section 8. Application for Preliminary Approval Any Owner proposing to construct improvements requiring the prior approval of the Project Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Project Architectural Committee Rules. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

(a) Within thirty (30) days after proper application for preliminary approval, the Project Architectural Committee shall consider and act upon such request. The Project Architectural Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Project Architectural Committee to act within said thirty-(30) day period shall constitute an approval. In granting or denying approval, the Project Architectural Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem property or desirable for the guidance of the applicant.

- (b) Any preliminary approval granted by the Project Architectural Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Project Architectural Committee.
- (c) In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

Section 9. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Project Architectural Committee by any Owner, and upon payment to the Project Association of a reasonable fee (as fixed from time to time by the Project Association), The Project Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof either: (a) all improvements made and other work done upon or within said Lot comply with this Declaration (b) 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 purchasers of the Lot shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Project Association and all Owners and such persons deriving any interest through them.

Section 10. Precedence of Community Architectural Committee. The Project Architectural Committee shall act in coordination with the Community Architectural Committee and shall undertake such duties and responsibilities as may be delegated to the Project by the Community Architectural Committee, all as more particularly provided in Article VIII of the Community Declaration (or any successor provision). The rulings , and decisions of the Community Architectural Committee shall have precedence over and shall supersede any such decisions or rulings of the Project Architectural Committee.

Section 11. Meetings. The Project Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two- (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The Project Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Project Architectural Committee function.

Section 12. Project Architectural Committee Rules. The Project Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Project Architectural Committee Rules," provided that such Rules shall not be less restrictive (but may be more restrictive) than the Community Architectural Committee Rules. Said Rules shall interpret and implement the provisions hereof by setting forth the standard and procedures for Project Architectural Committee review and guidelines for architectural design, placement of buildings, landscaping, color scheme, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Rules shall not be in derogation of the minimum standards established by this Declaration.

Section 13. Liability. Neither the Community Architectural Committee, the Project Architectural Committee, or any member of either shall be liable to the Project or Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 12, whether or not the facts therein are correct. Specifically and without limitation of the foregoing, plans and specifications are not approved for adequacy or engineering or structural design and, by approving any plans and specifications, neither the Project or Community Architectural Committees, the members thereof, the Project or Community Associations, the Members thereof, the Project or Community Boards, the Member thereof nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed pursuant to such plans and specifications.

ARTICLE VI  
USES PROHIBITED AND PERMITTED AND PROJECT RULES

Section 1. Residential Use.

(a) Residential Purpose and Occupancy. All Lots and dwellings shall be used for single family home or similar residential purposes and for no other purposes.

(b) Residential Lease (Rental Agreement). No lease may be for less than sixty (60) days and dwellings are not to be used for hotel or transient purposes. Any lease or rental of a residence shall provide that its terms are subject in all respects to this Restated Declaration, the Bylaws, the rules and regulations of the Association, and the actions of the Project Board, and that any failure of the lessee to comply with the terms of the foregoing shall be a default under the lease. A copy of the governing documents as defined in Article I above shall be provided by the Owner to the Lessee at the time a lease is executed. Nonresident Owners shall provide the Association with identification of all tenants in writing within thirty (30) days from the date of execution of the lease. A copy of the lease is to be provided to the Association within ten (10) days after execution, if Association rules and regulations so require. See requirements for notification of lessees in Article XII below. Owner is responsible for tenant(s) compliance with the governing documents.

Section 2. Commercial Use Prohibited. No part of properties shall be used or allowed to be used, or authorized in any way directly or indirectly, for any business, commercial, civil, manufacturing, mercantile, storing, vending, or other such nonresidential purposes except for home offices or occupations without any external visible or other evidence of commercial activity in, on or about the Lot, dwelling or within the development.

Section 3. Daycare Facilities. Certain daycare facilities are allowed by State law. Anyone wishing to operate such a facility must comply with all applicable laws and must register with the Project Board. Daycare providers or Owners of the subject Lot must carry liability insurance for personal injury and/or property damage and name the Association as an additional insured, and provide proof as to the coverage obtained to the Association. Use of Common Area, noise nuisance and any alteration to Lot to accommodate a daycare facility are subject to all Covenants, Conditions and Restrictions herein and any rules and regulations adopted by the Association.

Section 4. Nuisances. No noisy, hazardous, noxious, illegal, or offensive activity shall be carried on upon any Lot or portion of the properties, nor shall anything be done or kept thereon which may be or may become an annoyance, a disturbance, a nuisance, or safety hazard to the neighborhood, or which shall unreasonably interfere with the quiet enjoyment of the other residents. No speakers, bells, horns, whistles, or other sound devices, except those used exclusively for security purposes, shall be located or placed on any Lot. Any violation of this Article by any Owner, his or her family members, guests or tenants, is deemed a nuisance.

No Owner shall permit anything to be done or kept upon their Lot or any part or portion of the properties which will increase the rate of the Association's insurance thereon, or result in its cancellation thereof.

Section 5. Animals. No animals, fowl, reptiles, insects or poultry shall be kept within the Properties except as follows:

(a) A reasonable number of usual and ordinary household pets such as dogs, cats, birds, etc., may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and they are kept under reasonable control at all times, subject to rules and regulations adopted by the Project Board.

(b) Notwithstanding the foregoing, no pet may be allowed to make unreasonable noise or cause or become an annoyance or is obnoxious to other Unit Owners.

(c) All pets shall be under the absolute control of Owner and at all times or be restrained when in the Common Area. No dog shall be allowed on the Common Area without being held on a leash.

(d) No pet shall be allowed to defecate on any portion of the Common Area or other Owner's Lots, unless the Owner thereof immediately removes the feces and properly disposes it. Any and all animals left to roam free in the Common Area are subject to being picked up and taken to the local pound or animal shelter. Guide dogs belonging to visually handicapped Owners, their lessees or guests are exempt from the provisions of this paragraph.

(e) The Association shall have the authority to set reasonable rules and regulations consistent with this Section, including rules related to number and size of animals that can be kept, and may impose fines or other discipline, including forced removal of a pet or animal that poses an unreasonable nuisance, threat or safety hazard upon affording the Owner notice and a fair opportunity to be heard or get rid of the animal before imposing the discipline.

(f) Any structure for an animal or animals is prohibited unless it is out-of-sight from the Common Area or neighboring property.

Section 6. Vehicles. No mobile home, boat, trailer, recreational vehicle or commercial vehicle of any kind (except regular sized vehicles or pickup trucks without obtrusive articles or items of business/nature attached) shall be kept, stored or parked on any portion of the Properties; provided, however, that such vehicles may be parked completely inside garages. Garages may be used only for vehicles, storage and workshop areas and may not be converted for use to living space.

Boats, recreational vehicles and trucks otherwise prohibited may temporarily be parked on streets or in driveways for purposes of loading and unloading only. Commercial vehicles being used in the furnishing of services to the Association or to an Owner shall be permitted to park temporarily in designated parking areas

on Owners' Lots. No automobile, truck, boat or other vehicle shall be constructed, reconstructed or undergo repairs on any portion of the Lots (except wholly within closed garages) or Common Area, except for emergency repairs (such as tire changes or battery charging as necessary).

All acceptable vehicles including cars standard sized vans and pick up trucks ½ ton or smaller, must be parked within parking spaces or garages. Garage doors are to be kept shut at all times except when entering or exiting, loading or unloading stored items of a personal (not commercial) nature.

Section 7. Mailboxes. There shall be no exterior newspaper tubes or freestanding mailboxes except as may have been initially installed or thereafter approved by the Community Architectural Committee (or Project Architectural Committee if assigned the authority).

Section 8 Signs. No sign of any kind shall be displayed to the public view on or from any Residence Lot or the Common Area unless approved by the Board. The following must be approved:

- (a) Signs required by legal proceedings, or the prohibition of which is precluded by law;
- (b) Signs required for traffic control and regulation of open areas within the Properties;
- (c) Address sign on or in the front of the dwelling (Lagoon Lots may have signs front and back) as originally installed or approved by the Architectural Committee; and/or
- (d) One "For Sale" or "For Rent" sign of reasonable dimensions on the Residence Lot which is for sale or lease (which must be placed so as not to damage the landscaping or area where it is placed). Two signs are allowed on Lagoon Properties.

All sign requirements and entitlements are subject the Community of Harbor Bay Isle Declaration and/or its rules and regulations duly adopted, which preempt the above to the extent there is any conflict in interpretation. Section 9. Rubbish. Trash Containers and Collection. No weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any Common Area, Lot, or any area within the Properties which render such portion unsanitary, unsightly, offensive or detrimental to any property in the vicinity. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers provided by or allowed by the Project Board and/or the City. Containers must be kept out of sight in garages or backyard areas. Sanitary containers may be set out for a reasonable period of time before and after scheduled trash pickup times, subject to the Project Rules.

Section 10. Clotheslines. No clotheslines shall be placed or permitted on any part of the Properties unless it is adequately concealed so as not to be visible from adjacent properties.

Section 11. Use/Presence of Wheeled Vehicles. Wheeled vehicles or recreational items of any type including, but not limited to, bicycles, tricycles, big wheels, roller skates, roller blades or skateboards are subject to local ordinances. If any use constitutes a nuisance or safety hazard, the Project Board has authority to restrict or prohibit further use or operation of the subject item in Common Areas. .

Section 12. Sports Apparatus. Basketball Standards and Backboards: There shall be no sports apparatus, including but not limited to basketball standards or backboards, attached or affixed to any buildings or fences, or maintained on any Lot, unless approved by the Community Architectural Committee

and the Project Architectural Committee which exists in compliance with any published Standardized Rules and Regulations of the Project Association or Community Association.

Section 13. Diseases and Insects. No Owner shall permit any condition on his or her Lot, which shall induce, breed, or harbor infectious plant diseases or noxious insects.

Section 14. Drainage. There shall be no interference with established drainage patterns or systems over or through any Lot within subject property or any real property outside the subject property unless adequate alternative provision is made for proper drainage and is first approved in writing by the Project Architectural Committee. For the purpose hereof, "established drainage" is defined as the drainage swales, conduits, inlets and outlets that existed at the time the overall grading of the properties was performed.

Section 15. Common Areas. Common Area shall be used only for recreational use by the Owners and Occupants of Lots, and their guests, subject to rules established by the Project Board of Directors of the Association.

No Owner of a Lot or any resident shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishing or other object therefrom, except with the written consent of the Project Board. If any Owner, their family members, tenants or guests, cause damage to the Common Area, the Owner of the unit shall be responsible and the costs to repair the damage may be charged as a reimbursement assessment under Article IV herein.

Nothing shall be stored or dumped in the Common Area without the prior consent of the Project Board. Where no consent is sought, the Association has the right to remove stored items at the Owner's expense. If storage facilities are required to accommodate this action, all charges for same will be assessed to the homeowner under Article IV herein.

Section 16. Water and Sewer. No individual water supply system, water softener system or sewage disposal system shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district and any applicable governmental health authority having jurisdiction.

Section 17. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power (telephone, television and the like) shall be constructed or maintained on any Lot or in the Project Common Area unless same are contained in conduits or cables constructed, placed and maintained underground or concealed in buildings or other approved structures.

Section 18. Solar Collecting Devices. The placement of the solar collecting devices on the roof requires the approval of the Project Architectural Committee

Section 19. Satellite Dishes and TV Antennas. All satellite dish and/or TV antenna installations are subject to standards set by the Community and Project Associations (with the Community standards as first priority). All standards set by the Project and/or Community Associations, although they may address placement, screening and obtrusiveness, must comply with the requirements of F.C.C. Rule 207 passed in 1996 or any successor rule. Until the F.C.C. Rule 207 is deemed to apply to condominiums, California law controls.

Section 20. Project Rules. The Project Board shall have the authority to adopt and amend rules pursuant to the provisions above and consistent with the spirit and intent of this Restated Declaration to allow the Association reasonable control over use of the Common Area and the properties. The rules may concern, but need not be limited to, matters pertaining to use of the Common Area and the recreational facilities located thereon; signs; collection and disposal of refuse; minimum standards of maintenance of property; parking and traffic restrictions; limitations on maintenance of landscaping or other improvements on any Lot which obstructs the vision of motorists or which create a hazard for vehicular or pedestrian traffic; the terms and conditions upon which a Lot may be rented or leased by an Owner (including, but not limited to, the adoption of a standard lease or rental agreement to be used in the leasing or renting of Lots) and any other matter within the jurisdiction of the Project Association as provided in this Restated Declaration. Any Rule which purports to restrict or abridge, whether directly or indirectly, the right of an Owner to sell or lease his lot must include uniform, objective standards for invoking the restrictions upon sale or lease, none of which shall be based upon the race, color, creed, national origin, sex, marital status or physical disability of the vendee or lessee. No rule may be adopted which discriminates among Owners or which materially affects the rights, preferences or privileges of any Owner set forth herein. Any Rule of the Association which imposes a system of fines or penalties must provide the Owner subject to the discipline notice and the opportunity to be heard by the Project Board with respect to the alleged violations before a decision to impose discipline is made.

All such Rules or amendments thereto shall be provided to Owners and become effective not less than 30 days after first circulated; thereafter the Association shall provide to Owners the Association Rules as updated and/or annually with the budget package, and with all escrow packages provided to seller or seller's agent pursuant to the sale of a Lot.

In the event of any conflict between the rules and any provisions of this Restated Declaration, to the extent of such conflict, the Restated Declaration controls.

Section 21. No Derogation of Community Declaration. The foregoing restrictions shall not be construed in derogation or limitation of the restrictions contained in Article VI of the Community Declaration.

## ARTICLE VII

### MAINTENANCE/REPAIR OBLIGATIONS

(See also Maintenance Matrix attached as Exhibit "A" which is intended to clarify, but not supersede, this Article.)

Section 1. Association's Obligations. The Association is responsible as follows:

- (a) Maintenance of Project Common Area. The Association shall maintain, repair, replace, remove, and/or restore, operate and manage all of its Common Areas and facilities and improvements, utilities and landscaping thereon, and all property that may be acquired by the Project Association, in a neat, safe, attractive, sanitary and orderly condition, including the reconstruction, repair or replacement thereof when necessary or appropriate and all other real or personal property acquired by the Project Association. Common Area landscaping shall be maintained at all times in a healthful and attractive manner all maintenance shall be in accordance with requirements of the Community Declaration.

(b) Maintenance of Landscaping on Lots. The Association shall provide for the irrigation, cultivation, and other such maintenance of all landscaping on the front yard on each Lot. The maintenance of the rear yard of each Lot and the landscaping area thereon shall be the responsibility of the Lot Owner.

(c) Maintenance of Utility Laterals Storm Drains and Sanitary Sewers. Except as is maintained by government entities, maintain all of the utility laterals, storm drains and sanitary sewers within the Common Area as originally constructed.

(d) Repair and Replacement of Fences The Association shall share repair and/or replacement, as needed, those portions of each fence, which borders the Project Common Area.

(e) Compliance with Community Declaration. The Project Association shall operate and maintain all of the Project Common Area in compliance with the standards for the Community as set forth in Paragraphs 6.2 and 9.2 of the Community Declaration which are incorporated herein by reference.

(f) Parkway. The parkway is owned by the City. Maintenance and irrigation is performed and provided by the Project Association. Tree are replaced and pruned by the City.

Section 2. Owner's Obligation. The Owner is responsible as follows:

(a) Maintenance of Residence and Improvements on Lot. Each Owner shall paint, maintain, replace and repair all buildings and all improvements on their Lots including fences. Owner must make all appropriate repairs and replacements as often as the same shall become necessary. All repairs are subject to Project Rules and Architectural Standards as well as Community Rules and Architectural Standards. Replacement, betterment, or additions of plants shall be the responsibility of the Owner. All betterments and additions shall require review by the Project Architectural Committee pursuant to Article V, herein.

(b) Rear and Side Yard Landscaping Each Lot Owner agrees to landscape or cause to be landscaped the rear and side yards of the Lots. All such landscaping shall be undertaken in accordance with the procedures of Article V of this Declaration and the Community Declaration. The Lot Owner shall maintain or cause to be maintained said landscaping on the rear and side yard of the Lot.

In the event that rear yard or side yard landscaping on a Lot is not maintained to the standards established by the Project Architectural Committee or the Community Architectural Committee, the Project Board shall send written notice of such alleged deficiency to the Owner of said Lot. Said notice shall specify a date for a hearing before the Project Board regarding such alleged deficiency, at which time the Lot Owner shall have an opportunity to be heard. In the event that the Project Board determines that such deficiency exists after reasonable opportunity for a hearing has been afforded, the Lot Owner shall commence action necessary to rectify such deficiency within five (5) days of such determination. If the Lot Owner fails to do so commence such action, or complete such action in a reasonable time, the Project Board is authorized to effect or complete such action as is reasonably required to rectify such deficiencies and charge the Owner for the costs of such work as a Reimbursement Assessment under Article IV.

(c) Pest, Termite and Organisms. The Owner shall be responsible for all pest, termite and organism damage, repairs and prevention. If there are indications the termite, pest or organism damage may be caused by the Association (such as from faulty irrigation or sprinkler systems), the Owner and the Association may

choose to seek determination of the cause from an outside credible source (most likely a pest control expert) and assess damages accordingly, in relationship to a finding of cause.

(d) Lot Maintenance/Debris/Storage. Owner is obligated to keep their Lot free of debris or stored items.

(e) Pipes, Wires, Conduits, etc. Each Owner is responsible to assure all pipes, wires, conduits, cables, etc., that are located within the Lot are appropriately maintained. Damages caused by water pipes on the Lot are the responsibility of the Owner.

(f) Garages: Each Owner is obligated to maintain and repair the garage interior and the garage floor.

(g) Fences: Each owner is responsible for maintenance, repair and replacement of fences on the property. To the extent the fences are shared with others (the Association and/or other Owners), the parties that share the fence are responsible to share costs thereof in ratio to the length of fence on property. The Board shall suggest a procedure for bringing the parties together if they cannot agree on repairs and costs, and shall have the right ultimately to access any Owner for their fair share of maintenance, replacement and repair of Common Areas.

Section 3. Association Remedy for Non-Compliance. In the event an Owner of any Lot fails to fulfill his or her obligations in a manner satisfactory to the Project Board, the Association may, after notice to the Lot Owner and opportunity for a hearing before the Project Board pursuant to Article XI of the Bylaws, through its agents and employees, enter upon said Lot and repair, clean up, maintain and restore the Lot and the exterior of the building and any improvements erected thereon and the landscaping thereon. Costs of such exterior maintenance and/or landscaping shall be assessed by Reimbursement Assessment (see Article IV) to which the Lot is subject. "Maintenance" of landscaping shall include regular fertilization, irrigation and other garden management processes necessary to promote an attractive healthy environment for optimum plant growth. The Association shall have authority to charge to the Owner of any Lot the cost of maintenance and repair if it is necessary for the Project Board to arrange maintenance where an Owner has failed to maintain the property to an acceptable standard.

Section 4. Owner's Liability to Association. The Owner of each Lot shall be legally liable to the Association for all damages to the Common Area or to any improvements thereon caused by Owner or any occupant of Owner's Lot, or visitors, guests, etc. of any Owner or tenant residing in the home on said Lot. Charges related to such damage may be assessed in accordance with Reimbursement Assessments under Article IV and are subject to collection by lien or foreclosure if not paid by Owner, pursuant to Civil Code § 1367.

## ARTICLE VIII FOUNDATION LEVELING MAINTENANCE AND GROUND SUPPORT MAINTENANCE ON LOTS

Section 1. Definitions. For purposes of this Article VIII only, the following definitions shall apply:

(a) Maintenance. The term "Maintenance" shall mean releveling, by any method determined by the board in its sole discretion, of the Residence foundation or the underlying ground support thereof that results in leveling the Residence foundation or the underlying ground support thereof on any Lot to within four (4) vertical inches in fifty (50 ) horizontal feet as measured by a manometer, or to such lesser leveling as

the Association Engineer deems prudent under the circumstances. The term "Maintenance" specifically excludes, without limitation: repair of pre- or post-releveling damage to a Lot including the Residence and other improvements thereon, relocation costs, and costs for moving and storage of personal belongings and household goods, which work and cost shall be the sole obligation of the Owner.

(b) Foundation Leveling Maintenance. The term "Foundation Leveling Maintenance" shall mean releveling Maintenance of a Residence foundation.

(c) Ground Support Maintenance. The term "Ground Support Maintenance" shall mean releveling Maintenance of the underlying ground support of a Residence foundation.

(d) Floor Level Survey. The term "Floor Level Survey" shall mean a complete survey of the floor in the interior living space of a Residence (excluding the garage) with a manometer to determine the difference in elevation between various points on the floor, and conducted by a geotechnical or soils engineer licensed in the State of California.

(e) Association Contractor. The term "Association Contractor" shall mean a licensed contractor retained by the Association as provided in Section 7 of this Article VIII.

(f) Association Engineer. The term "Association Engineer" shall mean a geotechnical or soils engineer licensed in the State of California retained by the Association as provided in Section 4 of this Article VIII.

(g) Notice. The term "Notice" shall mean the written notice from an Owner to the Association as provided in Section 3 of this Article VIII.

Section 2. Fill and Bay Mud Construction. The land underlying the Properties is composed of sand and soft compressible bay mud. As a result, differential settlement may occur, and Foundation Leveling Maintenance or Ground Support Maintenance may be required. The Association's responsibility for Foundation Leveling Maintenance and/or Ground Support Maintenance shall be limited to providing Maintenance in accordance with the provisions of this Article VIII.

Section 3. Notice By Owner. Any Owner who believes that Foundation Leveling Maintenance or Ground Support Maintenance is required on his Lot must provide written Notice to the Board which shall be accompanied by a Floor Level Survey for his Residence which specifies that differential settlement affects the Owner's Lot and that such differential settlement exceeds four (4) vertical inches in fifty (50) horizontal feet at the time of the survey. The Floor Level Survey shall describe any differential settlement which affects the Residence foundation or the underlying ground support on such Owner's Lot as measured by use of a manometer.

Section 4. Preliminary Evaluation of Residence. Within a reasonable time after receipt of the Notice and the Floor Level Survey, the Board shall select and retain an Association Engineer to inspect the Lot and to determine: (i) the extent of any differential settlement of the Residence foundation or the underlying ground support thereof which has occurred and (ii) whether an Excluded Event (as defined in Section 11 below) was the primary cause of the differential settlement affecting the Lot. If such inspection reveals that the differential settlement affecting the Lot does not then exceed four (4) vertical inches in fifty (50) horizontal feet, the Association shall at that time have no further obligation concerning that Lot under this Article VIII and shall so notify the Owner in writing. Owner may provide a subsequent Notice to the Association pursuant to Section 3 no sooner than eighteen (18) months from the date of the last Preliminary Evaluation of

his Lot unless in the sole discretion of the Board, this eighteen (18) month waiting period is shortened. If the Board determines that an Excluded Event was the primary cause of any differential settlement, then the Association shall at that time have no further obligation concerning that Lot under this Article VIII and shall so notify the Owner in writing.

Section 5. Further Evaluation. If the Preliminary Evaluation required by Section 4 reveals that the Lot has experienced differential settlement exceeding four (4) vertical inches in fifty (50) horizontal feet and if the Board determines, after consultation with the Association Engineer, that such differential settlement was not primarily caused by an Excluded Event, then the Association shall cause the Association Engineer to conduct a Further Evaluation of the Lot and shall advise the Board whether or not any Maintenance is required. If the Association Engineer concludes that any Maintenance is required, he shall provide the Board with a description of the Maintenance which is required. At the sole discretion of the Board, the Further Evaluation may be conducted concurrently with the Preliminary Evaluation.

Section 6. Guidelines For Board Determination. After considering the information and recommendations of the Association Engineer, the Board shall determine, in its sole discretion, whether any Maintenance is required on the Lot. In making its determination, the Board shall consider the following guidelines:

Maintenance is required when the Board determines both (a) that a Lot has experienced differential settlement exceeding four (4) inches in fifty (50) horizontal feet, and (b) that the differential settlement has: (i) impact the function of the Residence or its components. and/or (ii) induced stress within the Residence, and/or (iii) produced wall tilting that is a safety concern.

In evaluating the foregoing guidelines, the Board shall consider the following factors. No single factor shall necessarily be determinative.

A. Function

- Doors have begun to stick or door locks have become misaligned, windows have begun to stick or window locks have become misaligned;
- Roof leaks have occurred which are attributable to strain and/or change in drainage patterns, or flat roofs or gutters have lost or reversed slope;
- Waste line plumbing has lost or has reversed slope, impacting gravity flow.

B. Tress

- Foundation (floor slab) cracking has occurred;
- Interior gypsum wallboard cracking has occurred;
- Exterior stucco cracking and/or siding distortions have occurred.

C. Abatement

- Uniform, rigid body floor tilting exists which produces wall tilt to such an extent that a plumb line passing through the center of gravity of a load-

bearing wall does not fall within the middle one-third (1/3) of the base. (See Uniform Building Code For the Abatement of Dangerous Buildings, I.C.B.O. Whittier, California, 1994).

Section 7. Association Duty to Perform Maintenance. If the Board determines that Maintenance is necessary, then within a reasonable period of time thereafter the Association shall contract with an Association Contractor to perform the Maintenance, except that the Association shall not be obligated to contract for or perform Maintenance on more than two Lots during any calendar year. If, in any calendar year, the Board determines that more than two Lots require Maintenance, Maintenance shall only be performed on the two Lots which have the highest priority at that time. Priority shall be determined solely on the basis of the dates the Association receives the Notices provided for in Section 3 of this Article VIII (i.e., an earlier Notice shall have a higher priority than a later received Notice). All Lots for which a Notice has been received by the Association but for which Maintenance has not been performed shall be placed on a waiting list and given priority over Lots on behalf of which later Notices are received. Notwithstanding the foregoing, the Board may determine, in its sole discretion after it has consulted with the Association Engineer, that the condition of a Lot presents a safety risk and may give such Lot priority over others.

Section 8. Method of Releveling Maintenance. The Board shall in its sole discretion after considering the findings and recommendations of the Association Engineer, determine the particular method of Maintenance to be utilized consistent with the original foundation design and the nature and extent of the Maintenance required. The Association shall conclusively be deemed to have satisfied the Maintenance requirements of this Article VIII when any Maintenance results in leveling the Residence foundation or the underlying ground support therefor to within four (4) vertical inches in fifty (50) horizontal feet as measured by a manometer, or to a lesser leveling when the Association Engineer in his sole discretion has determined that no additional leveling can be attempted without inducing substantial additional settlement or causing excessive damage to the Residence.

Section 9. Scope of Association's Maintenance Obligation. The Association is responsible only for Maintenance as described in Section 1 of this Article VIII. Such Maintenance shall include, and shall be strictly limited to, such of the following as the Board determines are necessary:

- Engineering necessary to accomplish the Maintenance; • Obtaining of all necessary permits and approvals;
- Removal and replacement of floor coverings, as necessary. Coverings and pads will be reused where possible, and otherwise shall be replaced with like kind and quality;
- Removal and replacement of toilets;
- Locating, shutting off and restarting utilities;
- Removal and replacement of all interior and closet doors and closet organizers;
- Checking of and repair of damaged or blocked underground utilities; • Repair/replace damaged plantings.

Section 10. Owner's Obligations in Connection with Association Performance of Maintenance. When the Board has determined that Maintenance is to be performed on a Lot, the Owner of such Lot shall have the obligation to, but his obligations are not necessarily limited to, (a) moving out of and moving back into the Residence all personal belongings and household furnishings and goods; (b) temporary relocation during the period in which Maintenance is being performed; and (c) repairing of all pre- and post-releveling damage to the Lot and improvements thereon, including, but not limited to, repairs to sheetrock, interior and exterior painting, above-ground plumbing, counter tops, roofs and roof drainage, flatwork, stucco, siding and realignment of out-of-square windows and doors. The Owner shall also enter into a written agreement with the Association, executed by the Owner and an officer of the Association, which agreement shall grant to the Association and the Association Contractor and other agents and representatives of the Association an irrevocable license to enter the Owner's Lot and Residence as necessary in the sole discretion of the Board to accomplish and complete the Maintenance.

Section 11. Excluded Events. The Association shall have no obligation to undertake any Maintenance on a Lot if the Board determines that the primary cause of the differential settlement of the Residence foundation or ground support is one or more of the following events ("Excluded Events"):

(a) Acts of God, such as flood, earthquake, tidal wave, water incursion or any other extraordinary catastrophic natural occurrence;

(b) Fire, casualty or other catastrophic event causing sudden differential settlement;

(c) Any Foundation Leveling Maintenance or Ground Support Maintenance undertaken by an Owner other than in accordance with this Article;

(d) Any events other than natural differential settlement.

Section 12. Costs of Releveling Maintenance: Regular Assessments and Special Assessments. The cost of any Maintenance undertaken by the Board pursuant to this Article VIII shall be borne by the Association. In order to establish a fund to defray the cost of such Maintenance, the Board may levy a Foundation Leveling Assessment in each fiscal year. The Foundation Leveling Assessment shall be included in each annual Association budget adopted as provided in Section 1365 of the California Civil Code. The amount of the Foundation Leveling Assessment levied in any year shall be set by the Board of Directors. The Foundation Leveling Assessment shall be included as a part of the Regular Assessment levied by the Association pursuant to Article IV of this Declaration and shall be deposited by the Board in a separate reserve account captioned "Foundation Leveling Maintenance Reserve Account" ("FLM Reserve Account.") Funds in the FLM Reserve Account shall be deposited in an interest bearing account and shall be expended by the Board solely in the performance of its obligations under this Article VIII except as otherwise expressly provided in Section 13, below. In the event all or any portion of the balance of principal and accrued interest in the FLM Reserve Account is not expended in any Association fiscal year in the performance of the Association's obligations under this Article VIII, then such balance and interest accruing thereon shall be retained in the FLM Reserve Account from year to year and shall not be utilized to offset current Foundation Leveling Assessments levied pursuant to the Section 12. At the discretion of the Project Board, interest earned on the Reserve Account may be utilized to offset current or future assessments payable pursuant to this Paragraph or otherwise under this Declaration. If the funds in the FLM Reserve Account are insufficient to cover the Board's current obligations under this Article VIII, the Board shall levy a Special Assessment on all Owners pursuant to the provisions of Article IV of this Declaration.

Section 13. Contracts with Consultants. The Board shall have the power and authority to hire, at the expense of the Association, such professional consultants, including, but not limited to the Association Engineer, as it determines to be reasonable necessary to advise and consult with it concerning performance of the Board's obligations under this Article VIII.

Section 14. Authority of the Board. The Board shall have such power and authority as shall be reasonably necessary to perform its obligations hereunder, and to minimize the cost to the Association of the Maintenance obligations described in this Article VIII. Without limiting the generality of the foregoing, the Board's powers and authority shall include the power and authority, but not the duty, to expend Foundation Leveling Reserve Funds for the purpose of conducting periodic inspections of the Properties to determine if any such Maintenance is or may be required and to effect such Maintenance with owner approval even though no notice from an Owner has been received as provided in Section 3, above. In exercising its judgment and making its decisions under Article VIII, the Board shall comply with the prudent business judgment standards set forth in Section 7231 of the California Corporations Code, and when it does so the Board's decisions shall be conclusive.

Section 15. Delegation of Authority. The Board may, in its discretion, delegate its powers and duties under this Article to (i) the Architectural Committee; (ii) a special Foundation Leveling Maintenance Committee, if one is appointed by the Board; (iii) a licensed professional engineer or other professional consultant or manager engaged by the Board; or (iv) the Community Association, the Community Architectural Control Committee, the Community Association General Manager or any special committee, if any, appointed by the Community Association as these terms are used and defined in the Community Declaration. Notwithstanding the foregoing provisions of this Section 14, however, the Board shall not delegate its authority to make the final determinations and decisions which are required under this Article VIII.

## ARTICLE IX INSURANCE

Section 1. Association's Duties Regarding Coverage. The Association shall have the power and the obligation to:

- (a) Common Area. Insure and to keep insured all improvements and fixtures of the Common Areas against loss or damage by fire and property damage for the full insurable replacement cost thereof, and it may obtain insurance against such other hazards as it may deem desirable. The Association may also insure any property whether real or personal owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Project Association.
- (b) Commercial Liability. Obtain liability insurance insuring the Association against any liability to the public or to any Owner, their invitees or tenants incident to their occupation and/or use of the Common Area and the lots in a combined personal injury and property damage coverage of liability not less than \$2,000,000.00 for each occurrence (such limits and coverage to be reviewed at least annually by the Association and increased in its discretion).

- (c) Workers Compensation. Obtain Workers Compensation Insurance to the extent necessary to comply with any and all applicable laws.
- (d) Fidelity Bond. Obtain a fidelity bond naming the Project Board, the Members, the Association and such other persons as a majority of the Members may designate as obligees, in an amount determined adequate or necessary for the Association for the current fiscal year.
- (e) Directors and Officers Liability Coverage. Obtain insurance covering acts or omissions of Project Board Directors and Officers and the Project Architectural Committee, in types and amounts as the Project Board determines to be appropriate.
- (f) Other Insurance. Obtain other types of insurance as the Project Board determines to be necessary to protect the interests of the Members.

## Section 2. Miscellaneous Association Insurance Matters.

- (a) Annual Review. The Project Board shall review the adequacy of all insurance at least once every year. The Project Board shall adjust the policies as necessary to provide coverage and protection that is customarily carried by prudent Owners of similar property in the area in which the Properties are situated.
- (b) Use of Proceeds. All proceeds from Association policies shall be paid to the Association and the Project Board shall have the authority to utilize the proceeds for purposes provided herein.

## Section 3. Insurance by Owner.

- (a) Property Insurance. Each Owner shall obtain and pay for a casualty and fire insurance policy insuring all of the buildings and improvements on his or her Lot, in an amount covering the full replacement value of all insured improvements. Proceeds payable from this coverage are payable to Owner, who is required to rebuild except as provided by Article XII.
- (b) Each Owner, and not the Association, shall also be responsible to insure their own personal property and shall also be responsible to provide liability coverage for accidents occurring on their Lot or in their Dwelling Unit.

## ARTICLE X POWERS/AUTHORITY OF THE ASSOCIATION

The Association shall have all of the powers set forth in the Articles of Incorporation, and Amended Bylaws together with its general powers as a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its members, to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners and guests, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in these Restated Covenants, Conditions and Restrictions.

ARTICLE XI  
DISTRIBUTION OF INFORMATION BY OWNERS

Section 1. Distribution to Buyer & All Lot Owners will provide buyers with a copy of all items required by Civil Code §1368, including but not limited to the Restated Declaration, Bylaws, and Rules and Regulations of the Association, before execution of the sale. Upon written request by a selling Owner to provide the information required by Civil Code Section 1368, the Association must provide the required information within ten (10) days of the request. The Association may charge a reasonable fee for providing this service (to cover costs of providing the documents and changing the records).

Section 2. Distribution to Tenants. All Lot Owners will provide renters with a copy of the Governing Documents as described in Article I above before the execution of the rental agreement and will be responsible for their tenants' actions and all fines, damages or obligations arising from their tenants' violations.

ARTICLE XII  
DAMAGE TO OR DESTRUCTION OF PROPERTY/RECONSTRUCTION

Section 1. Separate Interests/Residence Lots-Reconstruction.

(a) Reconstruction. If any improvements on a Lot are damaged or destroyed by fire or any other calamity, the insurance proceeds shall be paid to the Owner of said improvements or the mortgagees thereof, as their respective interests may appear, and such Owner or mortgagee shall use said proceeds to rebuild or repair the damage. In the event the insurance proceeds are insufficient to complete such rebuilding or repair, the Owner shall pay in advance such additional sums as may be necessary to complete such rebuilding or repair. In the event the Owner is not able or does not rebuild or repair the damaged or destroyed improvements, the insurance proceeds shall be paid to the Project Association and shall be utilized by the Project Association to raze the remnants of the damaged improvements to clean and clear the Lot of the foundation and unsightly evidence of such damaged improvements and to fence or otherwise render such property safe and attractive. In the event the insurance proceeds are insufficient to so clear the Lot, or in the event the Lot Owner fails to pay the insurance proceeds to the Project Association as required hereunder, a special assessment may be levied on the Lot Owner by the Project Association to perform such work.

(b) Injunctive Relief. In the event a Lot Owner does not commence any rebuilding or repair required pursuant to Paragraph (a) within a reasonable time, the Project Association may bring suit for an injunction to compel the Owner to perform said rebuilding or repair. Such reasonable time shall be presumed to be no greater than six (6) months from the date of the casualty.

Section 2. Damage or Destruction of Common Area. In the event of any damage or destruction to the Common Area or any of the improvements or facilities, if any, located thereon, the Project Association shall immediately undertake to repair and reconstruct any such damage or destruction substantially in accordance with the original design and standard of construction of the damaged or destroyed Common Area, improvement or facility. The Project Association shall utilize all available insurance proceeds to accomplish such repair or reconstruction. In the event such proceeds are insufficient to cover all of the costs for such repair or reconstruction, the Project Board shall levy a special assessment equally against all Owners to cover the insufficiency between the insurance proceeds and the costs. Said special assessment and any other special assessment imposed pursuant to this section shall be due and payable by all Owners in such installments and

during such period as the Project Board shall designate. Any such special assessment shall be a charge and a continuing lien upon each Lot owned by an Owner against whom said assessment is made, which lien shall be enforced pursuant to Article IV hereof.

### ARTICLE XIII CONDEMNATION

In the event of a threatened taking of all or any portion of the Common Area or the improvements thereon, the Owners hereby appoint the Project Board and such persons as the Project Board may delegate to represent all of the Owners in connection with the taking. The Project Board shall act in its, sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engage in a condemnation action.

Any awards received on account of the taking shall be paid to the Project Association. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area.

In the event of a total taking, the Project Board may in its sole discretion retain any award in the general funds of the Association, or, to the extent such award is not apportioned among the Owners according to the fair market values of the Lots at the time of destruction, as determined by independent appraisal.

Said appraisal shall be made by a qualified real estate appraiser with an M.A.I. Certificate or the equivalent, which appraiser shall be selected by the Project Board. The rights of an Owner and the Institutional Holder of a Mortgage (as defined in Article XV, below) on his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation.

### ARTICLE XIV RIGHTS OF LENDERS

Section 1. General. Institutional mortgagees of first mortgages and institutional beneficiaries (hereinafter referred to as "Lender" collectively) under first deeds of trust on Lots in the Project shall be entitled to the rights and privileges set forth in this Article.

Section 2. Exemption From Rights of First Refusal. Any Lender who comes into possession of a Lot pursuant to the remedies provided in the mortgage or deed of trust for foreclosure of the mortgage or deed of trust, or by assignment in lieu of foreclosure, shall be exempt from any right of first refusal which might be contained in or added to this Restated Declaration.

Section 3. Non-Liability for Unpaid Assessments. Any Lender who comes into possession of a Lot pursuant to the remedies provided in the mortgage or deed of trust by foreclosure of the mortgage or deed of trust, except upon a voluntary conveyance to the Lender, shall take the property free of any claims for unpaid assessments or charges against the mortgaged Lot which accrue prior to the time such Lender comes into possession of the Lot, except for claims for pro rata share of such assessments or charges to all units including the mortgaged Lot.

Section 4. Request for Default Notice. Any Lender may, by written notice to the Association, request written notice of any default in the performance of Owner's obligations under this Restated Declaration. Such request shall state the contact name and mailing address, the name of the Mortgagor, the date of recording of the mortgage and the official records book and page number, file number, or other reference to this section of this Restated Declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the address stated in such request.

Section 5. Inspection of Books and Records. Beneficiaries shall have the right to examine the books and records of the Association at the Association, upon reasonable advance request in writing to the Association, subject to the Amended Bylaws.

Section 6. Insurance Proceeds and Condemnation Awards. No provision of this Restated Declaration or Articles shall give a Lot Owner or any other party priority over any rights of a Lender pursuant to its mortgage or deed of trust in the case of any distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of common property of the Project owned by the Association or otherwise.

Section 7. Eligible Mortgage Holder Rights. "Eligible Mortgage Holder" is the holder of a mortgage (loan) who has given notice to Association of a request to receive all pertinent notices and proposed amendments, and that has provided a name, address and other contact information to the Association so that said notices and proposed amendments may be provided to correct contact person. To the extent any Mortgage Holder fails to provide this information, they are not eligible to receive such notices and proposed amendments.

(a) Notices to Eligible Mortgage Holders and Voting, Rights. The Association shall give timely written notice and an opportunity to vote to each Eligible Mortgage Holders when amendments listed below (b)(1) through (b)(7) below are proposed to the membership.

(b) Actions Requiring Approval of Eligible Mortgage Holders. Except as provided by any overriding statute in the case of condemnation or substantial loss to Common Area, unless sixty-six and two-thirds percent (66 2/3%) of the Eligible Mortgage Holders, based on one (1) vote for each Lot encumbered by a Deed of Trust held by the Eligible Mortgage Holder or sixty-six and two-thirds percent (66 2/3%) of the members, have given their prior written approval, the Association shall not be entitled to:

(1) Use hazard insurance proceeds for losses for other than for the repair, replacement or reconstruction of the Common Area property and covered properties;

(2) Partition or subdivide any Lots;

(3) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all of the

Common Area. (The granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);

(4) Terminate the legal status as a result of substantial destruction or substantial taking in condemnation of the property within the Development.

(5) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls or common fences and driveways or the upkeep of lawns, plantings or other landscaping in the Common Area.

(6) Fail to maintain fire and extended coverage insurance on insurable common property owned by the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost.

(7) Fail to maintain an adequate Reserve Fund.

Any Eligible Mortgage Holder who receives a written ballot regarding such an amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written ballot materials shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered with receipted copy provided; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last provided address.

Section 8. Notice Regarding Substantial Damage or Destruction, Condemnation or Eminent Domain. In the event of substantial damage to or destruction of any Lot or portion of the Common Area or if any Lot or any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, each Lender who requests such notice shall be provided timely notice of any such damage, destruction or proceedings.

Section 9. Lender Protection. No breach of any of the covenants, conditions and restrictions nor the enforcement of any lien provisions contained in this Restated Declaration shall render invalid the lien of any Mortgage or Deed of Trust made in good faith and for value on any Lot, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

## ARTICLE XV GENERAL PROVISIONS

Section 1. Enforcement. Acceptance of a deed to a Lot this Association constitutes acceptance of all restrictions herein, and all provisions of the Amended Bylaws. The Association, or any Owner, shall have the rights to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereafter imposed by the provisions of this Restated Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any legal action is entitled to recover legal fees and costs under this provision and as provided in California Civil Code Section 1354.

Section 2. Waiver. Failure to enforce any provision herein shall not result in a waiver of the right to enforce the same provision or any other provision in this Restated Declaration.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 4. Term and Amendment. The covenants and restrictions of this Restated Declaration shall run with and bind the land, for a term of forty (40) years from the date of this Restated Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless legally terminated or amended. This Restated Declaration may be amended by approval at any time of at least fifty-one percent (51%) of the Lot Owners subject to Article XIV, Rights of Mortgagees, or for certain specified subjects, which require a higher percentage. Any amendment must be properly recorded to be effective.

Section 5. Annexation and Consolidations. Upon an annexation or consolidation of the Association with another association, its properties, rights and obligations may be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligation or another association may be added to the properties, rights and obligation of the Association as a surviving corporation pursuant to an annexation. Annexation of any properties shall require approval of a majority of the Owners by written consent.

Section 6. No Partition. There shall be no judicial partition of the Common Area or any part thereof. Each Owner specifically waives and abandons all rights and causes of action for a judicial partition of any ownership interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced for judgment.

Section 7. Indemnification of Officers, Project Board Members Committee Members and Other Volunteers. No member of the Project Board or any committee of the Association, nor any officer of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Project Board, or any other representative of the Association, provided that such person has, upon the basis of such information as may be possessed, acted in good faith and without malice. The Association shall indemnify such person or entity for all reasonable costs, including attorney's fees, incurred in the defense of such action, including any settlement thereof when such action did not arise out of the willful misconduct of such person.

Section G. Alternative Dispute Resolution. All parties (the Association and every Owner) are subject to the provisions of Civil Code § 1354 regarding Alternative Dispute Resolution.

Section 9 Any references to gender herein include male and female owners and where applicable, any entity with ownership/membership rights and obligations.

Section 10. Successor Statutes. All provisions controlled by current California law shall be subject to the provisions of any successor statutes.

Section 11. Conflicts. If any provision of the Amended Bylaws conflicts with this Restated Declaration, this Restated Declaration controls.

IN WITNESS WHEREOF, we being the President and Secretary of CLIPPER COVE OWNERS ASSOCIATION have hereunto set our hands this

AMENDED CC&Rs - April 1999

AFFIDAVIT

The undersigned hereby declares under penalty of perjury that the foregoing is true and correct. We are the duly elected and acting President and Secretary of CLIPPER COVE OWNERS ASSOCIATION, a California corporation; and the foregoing is a true copy of the Restated Declaration of Covenants, Conditions & Restrictions which have been properly approved by the requisite percentage of the Lot Owners of CLIPPER COVE OWNERS ASSOCIATION on or about

President, on behalf of  
CLIPPER COVE OWNERS ASSOCIATION

Secretary, on behalf of  
CLIPPER COVE OWNERS ASSOCIATION

ACKNOWLEDGMENT  
STATE OF CALIFORNIA)  
COUNTY OF ALAMEDA) ss.

WHEN RECORDED, RETURN TO:  
Board of Directors  
Clipper Cove Owners Association  
c/o Beth A. Grimm, A Professional Law Corporation  
3478 Buskirk Avenue, Suite 1000  
Pleasant Hill, CA 94523

OCT 26 1994 ~ ~ ~ 399357

CERTIFICATE OF AMENDMENT OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
CLIPPER COVE OWNERS ASSOCIATION

The Declaration of Covenants, Conditions, and Restrictions recorded January 17, 1980 as Instrument No. 80 009727; and any Declarations of Annexation for the tracts affected and any and all prior and subsequent Amendments to that Declaration of Covenants, Conditions, and Restrictions arc now superseded by that document entitled "Restated Declaration of Covenants, Conditions and Restrictions – Clipper Cove Owners Association" recorded concurrently with this Certificate of Amendment. The property affected by the Restated Declaration consists of

All that certain real property situated in the City of Alameda, County of Alameda, State of California, more particularly described as:

Each and ever., Lot (Lots 1-66) and the Common Area (Lots A and B) as shown upon the map entitled "Tract 4120", which Subdivision Map was filed of record in the Office of the County Recorder on

December 15, 1978, in Book 108 of Maps, pages 17-23, inclusive, Alameda County Records.

Each and every Lot and the Common Area as shown upon the map entitled "Tract 4307", which Subdivision Map was filed of record in the Office of the County Recorder in Book 122 of Maps, pages 84-87, inclusive, Alameda County Records.

Each and every Lot and the Common Area as shown upon the map entitled "Tract 4361 ", which Subdivision Map was filed of record in the Office of the County Recorder on February 6, 1981, in Book 126 of Maps, pages 14, inclusive, Alameda County Records.

COMMUNITY OF HARBOR BAY ISLE  
COMMUNITY AND PROJECT ARCHITECTURAL COMMITTEES  
APPLICATION REVIEW AND SITE INSPECTIONS GUIDELINES

The following site inspections guidelines were created to assist site inspectors when evaluating an application or when performing a final inspection. CAC members should always consult their manual for each association's specific architectural guidelines. If you have additional questions, the Architectural Administrator can assist you or refer you to a resource person.

**LOTS - INLAND AND LAGOON LOTS**

Land-locked lots: These lots are surrounded on both sides and the rear by other residential lots. Rear yard installations usually only impact on the three neighboring properties depending on the configuration of the surrounding lots. Corner lots require special consideration of the installation's impact as viewed from the public way.

Lagoon lots: These lots border on a lagoon and require special installation and view protection consideration because of their visibility from a wide area. Lagoon lots may have direct access to the lagoon or they may be separated by a fence and foot path. Special rules apply to these lots, including construction of decks and docks. Refer to the CAC's Rules and Standards Addenda.

Zero lot line-like or shared easement lots: These lots have a neighboring house built on all or a portion of the lot line. When necessary, the Architectural Administrator reviews side yard easements dominant and subservient tenement status as recorded in each owner's grant deed, if available. The shared easement requires special consideration of limitations of landscape, construction and grading. Access must be preserved for inspection and repairs and maintenance of foundation, siding, gutters, roofing, painting, etc.

Common area lots: These areas are owned by the association for the benefit of all owners. Bordering fences usually are owned and maintained by the project or community association. Installations should be evaluated for their impact on the common area, such as bike paths, pedestrian walks, fences, parks, or water-front areas.

**NEIGHBORHOOD COMPATIBILITY OF PROPOSED INSTALLATION**

A proposed installation should be evaluated for its aesthetic quality, including design, scale, shape, color, and mass. While you must occasionally make aesthetic judgments, be sure to allow the applicant the opportunity for their aesthetic expression where it will not adversely affect the Community or the neighborhood. If you are uncertain about the installation's appropriateness, request assistance from the Architectural Administrator or from one of your colleagues.

Be sure to evaluate proposed house additions based on the CAC's Standard for Reviewing Proposed Additions to Existing Dwellings. Check the project association's architectural guidelines to learn of any restrictions against 2nd or 3rd story additions or rear yard setback requirements that may be more restrictive than the CAC's rules.

It is helpful for PAC members to walk their project association to achieve a visual survey of the neighborhood. **INSTALLATION IMPACT ON NEIGHBORING PROPERTIES**

The proposed installation should be evaluated for its impact on privacy, views, noise/vibration, and drainage of neighboring properties, common areas and public ways.

#### **RATIO OF LANDSCAPE TO HARDSCAPE**

The Community Architectural Guidelines specify no less than 20% of a rear/side yard and 60% of front yards shall contain live plant material. Project association architectural guidelines may be more, but not less restrictive. Refer to the project guidelines to learn if an association has specified a more restrictive limit. Hardscape includes installations like patios, deck, docks, rocked areas, and walks as well as house additions and solariums that increase the original house footprint. If the lot is very small, consideration may be given, on a case-by-case basis, to an exception of the ratio of hardscape to permit appropriate land use.

#### **SPECIAL CONSIDERATIONS WHEN ASSOCIATIONS ARE RESPONSIBLE FOR ASSOCIATION PROPERTY MAINTENANCE AREAS**

Some project associations: Baywood P7111age, Bay Colony, Brittany Landing Bay and Harbor, Centre Court, Clipper Cove, Freeport, and Harbor Pointe, are responsible for front yard landscape maintenance. Costa Brava Association is responsible only for the landscaped common area beyond the front patio courtyard, including the front walk beyond the courtyard gate. The Project Boards may not approve an owner's proposed changes to front landscape that increase the overall cost to other members or, conversely may require the owner sign a "runs with the land" maintenance agreement

The same criteria applies to changes to the exterior of homes in associations responsible for providing the exterior maintenance.

#### **HARDSCAPE INSTALLATIONS**

Arbors/Overhangs: The generally acceptable height limit is 8 feet 6 inches above the grade (not the patio or deck surface.) In the case of an overhang installed over a door or window, the arbor may be high enough to clear the header, generally 9 feet. Arbors may be allowed to weather naturally or be sealed with a clear sealer. A painted finish matching the house base or trim color may be approved if the project's architectural guidelines permit overhang painting.

Decks: In addition to regular deck standards, decks on lagoon lots must comply with the CAC's lagoon deck building envelope standard. Wood should be the appropriate grade and appropriately treated for earth contact, or be installed on supporting piers to avoid wood-earth contact. The wood may be left to weather naturally or may be sealed with a clear sealer. Staining or painting decks is usually not permitted so check your manual.

Consideration should be given regarding whether moisture and/or insect flashing should be installed between a deck and a house. Some associations are responsible for exterior house maintenance. Refer to the project guidelines to learn if flashing is required or if attached installations are prohibited.

Special neighbor privacy consideration should be applied to a proposed deck that will exceed a height of 12 inches above the grade.

Dog Runs: Be sure to check the project association's architectural guidelines for special requirements to protect the fence from the dog. Normally a barrier is required so the animal will not come into direct contact with the fence.

Docks: Dock construction must comply with the Private Dock Agreements between the Community of Harbor Bay Isle and the City of Alameda. Refer to the CAC manual for specific details, including dock use restrictions. City of Alameda building permits are required for docks. The number of feet the dock may extend into the lagoon is determined by the easement specifications in each owner's grant deed.

The Community requires that docks be anchored behind the lagoon curb wall, not on the curb, for greater strength and stability. The Dock Agreements prohibit anything from being installed on docks including, but not limited to lights.

Fence/Earth/Structure Contact: A minimum of 6 inch clearance must be maintained between . fences and earth, patios, decks, retaining walls, planter boxes, etc. In raised planters, for example, a rear support wall at least 6 inches from the fence is required to keep earth away from the fence.

A good guideline is: The soil level should be at least four inches below the bottom edge of the house siding; soil should not contact any fence posts and there should be at least a three-inch clearance between the soil and the bottom rails of the fences. If these conditions are not met, homeowners become responsible for any subsequent repair, maintenance and replacement resulting from non-compliance with these requirements.

Fence Extensions: Refer to your manual to learn if the project association prohibits fence extensions. If permitted, extensions must comply with the CAC's Fence Extension plan agreement between the Community of Harbor Bay Isle and the City of Alameda. Evaluate the extension for impact on views of neighboring property, public ways or common areas. Look on both sides of the fence to learn if the grade is the same on both sides for maximum height measurements.

Garage Doors: Be sure that a proposed garage door replacement meets the project association's design criteria. Windows in garage doors are not permitted. Most associations do not permit painting garage doors with two colors.

Gazebos: The generally acceptable height limit is 8 feet six inches above the grade (not from the surface of a patio or deck.) The wood may be allowed to weather naturally or may be sealed with a clear sealer. Check your manual for the project associations requirements regarding painting gazebos. Roofing materials other than wood (such as canvas, etc.) are not permitted.

Rear and Front Yard Landscape-Hardscape: Refer to the Project guidelines for restrictions of hardscape ratios, plant materials and lighting: (e.g. Some associations do not permit fruit trees or rock gardens in front yards.) Only Blue Gum trees, Bamboo planted in the ground, Pampas grass and certain Fountain grasses are prohibited within the Community of Harbor Bay Isle.

Light Fixtures and Lighting: Only low height, appropriately shielded, low level garden lights are acceptable. Pole lights are not permitted except in limited specific areas designated by the CAC. Flood or spot lights, including motion-sensor lights, if permitted, shall be shielded (at least 1 inch longer than the bulb) and shall be aimed to avoid impacting on neighboring properties or the public way.

Patios: Common acceptable patio materials are poured concrete with broom or exposed aggregate finish; brick (or brick-edged concrete); flagstone or paving tiles (in an acceptable color); stepping stones interspersed with plant ground cover. Refer to the project guidelines for limitations of rock colors such as white or red rock, which are not permitted. Discreet use of coloring added to the concrete mix is allowed in most project associations, but subsequent painting of concrete is prohibited.

Sheds: Refer to the project architectural guidelines for allowed shed locations and distance from fences, design, materials, roofs, etc. Evaluate the shed's impact on neighboring properties. Metal sheds are not permitted in Harbor Bay Isle.

Spas: Evaluate proposed spa installations for equipment noise nuisance to neighboring properties. Inform the homeowner that the spa's operating (filtering) system should not operate during evening hours. If the spa is installed on a deck, evaluate for the impact of privacy of neighboring properties. Spas must drain into the sanitary sewer system.

Trees: When evaluating proposed tree locations, consider the mature height, especially those over 40 feet, and spread of the tree and recommend an appropriate installation distance from a fence or structure, and whether root guards should be required. Consider whether or not a proposal to remove a tree should require installation of a replacement tree.

Trellises: Free-standing wood trellises to support plants usually may not be higher than the adjoining fence and shall not be installed closer than 6 inches to the fence.

## OWNER CONTACT FOR SITE INSPECTIONS

Most owners like to be present when the CAC inspector visits their property and it helps correct problem plans. Call the owner as far in advance of the inspection date as possible to

set the time of the inspection or if a more convenient day is desirable. If the owner will not be available, look for a property entry waiver in your paperwork or on the owner's front door. If the owner is not home when you visit, please leave the CAC's site inspection performed notice or a note so the owner is assured the inspection has been conducted

## PAC RECOMMENDATIONS TO THE CAC

If the project association's PAC has provided a recommendation for the proposed installation. CAC members should incorporate it into their recommendation to the CAC. If any installation is disapproved by a PAC, a PAC inspector must visit the site and the PAC should send a representative to the CAC meeting at which the application is to be reviewed to try to resolve the issues with the PAC and the property owner. It may be helpful for the PAC site inspector to contact the CAC member assigned the application or the Architectural Administrator to discuss the proposed plans. The CAC encourages PAC recommendations that show the appropriateness of an application and more detailed concerns of the neighborhood.

Applications should not receive recommendations for approval that clearly violate the architectural guidelines of the Community or of the project association, and are not sufficiently mitigated with conditions. Any application that degrades the value of the subject or neighboring property also should not be recommended for approval.

The strictness with which the CAC applies its design standards is ultimately a matter of judgment. The CAC is even-handed and consistent unless otherwise warranted by the circumstances of the specific case. The CAC is reasonable, not arbitrary or capricious, but is aware that failure to uphold reasonably developed standards could lead over the years to degraded property values.

For those Project Associations whose Board is acting as the architectural committee and may not meet monthly, please remember that the CAC must act within the CC&R 30-day from receipt of application deadlines or the applications and proposed plans will automatically be approved

## FINAL INSPECTIONS

Final inspections must be requested by the owner and approved within one year of the CAC's approval of the application. Some Project Association Boards may require its owners to complete their installations and request final inspections sooner than within one year if the property is in violation of the association's landscape installation deadline.

The final inspection is generally assigned to the project association's architectural committee. The inspection must be performed and the paperwork returned to the Architectural Administrator within 60 days of the date the final inspection was requested or the final inspection will be approved by default as required by the Community CCARs.

The inspector should verify that the installation substantially conforms to the plan that was approved by the CAC. If the inspector finds some deviation from the approved plan, the work should be evaluated to determine whether or not it would be approved as long as the

alterations or substitutions are minor. The inspector should note the changes on the plans and cite them on the final inspection form as approved heights of arbors, gazebos, decks, etc. lighting compliance.

If you notice something on the property that is out of compliance, (e.g. a shed or light installation that was not included on the original plans), inform the Architectural Administrator, who will notify the association manager. A CC&R violation notice to the owner may result.

#### **AN IMPORTANT CONSIDERATION!**

Please avoid imposing your personal taste when evaluating an owner's proposed installation or the final inspection. Approve the application and plans if they meet the Community and Project Association CC&Rs, architectural guidelines, and the generally accepted neighborhood design and aesthetic standards. Approve the final inspection if the installation substantially complies with the CAC-approved plans. If the work is well done, a word of praise goes a long way. Your complimentary comments will be included in the owner's final inspection approval letter. If you have any doubts about whether an approval is warranted, please call the Architectural Administrator at 865-3363 for guidance.

## COMMUNITY OF HARBOR BAY ISLE OWNERS ASSOCIATION

### ARCHITECTURAL APPLICATION AND PLANS REVIEW PROCESS

Owner's application and plans received and date-stamped. Sections 6.2(F), 8.1 and 8.6.  
Plans/ application are reviewed by the Architectural Administrator (AA) for completeness.  
AA writes to owner to request more information, if necessary)  
AA sends site-inspection date and information notice and waiver to owner.  
AA enters application information into computer, identifies which neighbors will get 10 day notices.  
AA sends 10-day neighbor notices identifying address and proposed property improvements.  
Copies of Application/plans and the additional information request letter are distributed to the appropriate Project Architectural Committee (PAC) and to the Community Architectural Committee (CAC).

PAC reviews the application/plans, (may do a site inspection, most PACs don't).  
PAC returns comment-recommendation form to AA prior to the CAC's meeting.  
AA distributes the PAC's recommendation, the signed site inspection waiver, and any neighbor comments to the CAC member assigned to review the application.  
CAC member makes a site inspection, talks to owners, if possible, reviews application/plans for impact on neighborhood, community and compliance with CC&Rs, Rules and Standards. CAC considers the PAC's recommendation, including consultation with the PAC, if necessary. Sections 3.7(C), 8.3, 8.5, 8.6 and 8.7.

At the CAC's bi-monthly meeting, application/plans discussed with CAC members and, if present, owner and PAC representative. The CAC must vote to approve, disapprove, or deem the application incomplete within 30 days after receipt of the complete application. Sections 8.6 and 8.7. (CAC Resolution 89-1, 12118/90.

"Date of Submission" is defined as the date of a regularly scheduled meeting of the CAC at which a quorum is present and at which the subject application is deemed complete and ready for a decision by the Committee." The CAC's Resolution also specifies "an application may be deemed incomplete if the CAC votes in the majority that additional information is required before the application can be accepted or rejected. A vote to deem an application incomplete shall postpone the effective "submission date" to that regularly scheduled meeting of the CAC at which a quorum is present and the CAC deems the application complete.")

On the day after the CAC meeting, AA publishes the CAC Minutes to all Boards, PACs and Association managers.

Section 8.4. On the day after the CAC meeting, AA writes the owner an Application Resolution Letter specifying the CAC's action to: approve, disapprove, or deem the application incomplete. The letter also includes any special approval conditions.

If the application is not approved; AA sends the owner information to help resolve the problem.

Problem applications that are modified may be resubmitted to the CAC and PAC for reconsideration. At next CAC meeting, CAC acts on the resubmitted application. AA sends the CAC's resubmission vote outcome letter to owner.

Owner may request modification of the original plans; submit 'revisions at any time during the life of the application. The application is reviewed by CAC/PAC and voted on as above. AA writes a letter to the owner and documents the property file re the plan amendments. (Resubmitted, modified application/plans do not extend the CC&R deadline for landscape installation. Section 6.2(B).)

Homeowner must install property improvements and request a final inspection within the one-year life of the application. Sections 8.8 and 8.9. Owner may request in writing to the CAC and application extension due to special circumstances. Section 8.8. Owner's request is voted on by the CAC; if approved, owner receives a letter from AA with the new final inspection deadline. If not approved, owner is advised of the application's expiration date. (Application extensions do not extend the CC&R deadline for landscape installation.)

AA sends courtesy reminder letters at nine months and one year after application/plans are approved by CAC.

Owner completes work, calls AA to request a final inspection. Sections 8.8 and 8.9. AA prepares final inspection forms and copies of the approved plans and pertinent correspondence for the PAC and sends them to the PAC chairman. If the association does not have a PAC, the final inspection is assigned to a CAC member.

The final inspection must be conducted within 60 days following the owner's request for a final inspection. Section 8.9(A).

AA tracks final inspection time limit and reminds the PAC of the deadline.

When the PAC's final inspection report is received by AA, a final approval letter is sent to the owner specifying the final is approved or disapproved. Section 8.12. If approved, the application file is documented and closed. If not approved, within 60 days of the request for a final inspection, AA sends the owner a letter with the remedy required and a deadline by which time the work must be corrected. When corrected, a second final inspection is scheduled as above beginning with a new 60-day period.

If the final inspection not conducted by the PAC within 60 days, the owner's improvements are approved by default and a notification letter is sent to owner. Section 8.9(B).

If a final inspection does not gain approval within the deadline previously specified, or if the final inspection reveals a CC&R violation, AA commences a series of violation due process letters to the owner. Section 8.9. (The CC&Rs require that the matter be referred to the Board within 30 days of the denial of the final inspection approval.)

If AA or the PAC are unable to correct violation, and the due process letter series is exhausted, it has been the practice to refer the violation to the project association board

for CC&R enforcement. Section 8.9(C). (The CC&Rs require that the Board schedule the hearing between 15 and 30 days after the matter is referred to the Board.)

The project board conducts a hearing. Sections 3.9 and 8.1. If the owner is dissatisfied with the board's decision, the owner may appeal it to the Community Board. Section 8.9(D). (The CC&Rs require the owner to correct the violation within 45 days of the Board's hearing decision.)

Occasionally, but not often, owners will seek "preliminary approval" from the CAC of their plans. The procedures and time limits for this process are found in Section 8.10.