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FILED
SAN MATEO COUNTY

NOV 02 2007

Clerk of the Superior Court
By  DEPUTY CLERK

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SAN MATEO

12 STEPHEN JOHNSON, ABIGAIL)
13 JOHNSON, trustees and individuals,)

14 Plaintiffs,)

15 vs.)

16 PELICAN COVE CONDOMINIUM)
17 ASSOCIATION, an association, PML)
18 MANAGEMENT CORPORATION, a)
19 corporation, DOE ONE through DOE)
20 THREE HUNDRED, inclusive,)

21 Defendants.)

No.

CIV 467497

COMPLAINT FOR FRAUD,
MISREPRESENTATION, DECLARATORY
RELIEF, NEGLIGENT INTERFERENCE
WITH ECONOMIC ADVANTAGE,
SPECIFIC PERFORMANCE, TRESPASS,
AND FOR DAMAGES AND INJUNCTIVE
RELIEF

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 1. Plaintiffs, STEPHEN JOHNSON [S. JOHNSON] and ABIGAIL JOHNSON [A.
23 JOHNSON], collectively referred to hereinafter as “the JOHNSONS” are trustees of that certain trust
24 known as the “Stephen and Abigail Johnson Trust” and are the sole owners and shareholders of the
25 Roeder-Johnson Corporation, a professional consulting marketing corporation authorized to do and
26 doing business in San Mateo County, California.

27 2. Defendant, PELICAN COVE CONDOMINIUM ASSOCIATION [PELICAN] is and at
28

1 all times mentioned herein mentioned was, an association authorized to doing business in San Mateo
2 County California as a condominium association.

3 3. Defendant, PML MANAGEMENT CORPORATION [PML] is and was at all times herein
4 mentioned a corporation authorized to do and doing business in the State of California in the County
5 of San Mateo and was the agent of Defendant, PELICAN, authorized to act on its behalf.
6

7 4. Unless otherwise noted herein, each of the Defendants herein was the agent or employee
8 of each of the remaining Defendants and in doing the things hereinafter alleged, was acting within
9 the course and scope of said agency or employment.

10 5. The true names and capacities, whether individual, corporate, associate, or otherwise, of
11 Defendants, DOE ONE through THREE HUNDRED, inclusive, are unknown to Plaintiffs who,
12 therefore, sue such Defendants by such fictitious names, and who will amend this Complaint to show
13 their true names and capacities when ascertained. Plaintiffs are informed and believes and thereon
14 allege that each of these Defendants is responsible in some manner for the events and happenings
15 herein referred to and thereby proximately caused the injuries and damages to Plaintiffs as herein
16 alleged.
17

18 6. A copy of the Conditions, Covenants and Restrictions [CC&R's] governing PELICAN
19 is attached hereto and marked Exhibit A.
20

21 **FIRST CAUSE OF ACTION**
22 (Misrepresentation)

23 7. Plaintiffs refer to paragraphs 1 through 6 of their Allegations Common to All Causes of
24 Action and incorporate them herein by reference as though fully set forth again herein.

25 8. In and about March of 2007, Plaintiffs were the trustees of the Stephen and Abigail
26 Johnson Trust and also were both professional consultants handling marketing issues through their
27 wholly owned corporation Roeder-Johnson Corporation. Plaintiff, S. JOHNSON, was and is an avid
28

1 yachtsman, pilot, photographer, and computer graphics hobbyist. Seeing that they no longer needed
2 a commercial office in an era where the Internet has been responsible for the rapid growth of
3 “virtual” offices operated in homes with simply a computer and network connection and needing
4 more space to pursue their hobbies and interests, Plaintiffs decided to expand their home offices to
5 make more space both for their personal pursuits, and to have a convenient but virtual home base
6 for their consulting practice. Also, their commercial office space contained many pieces of expensive
7 furniture which they wanted to keep and for which they did not want to pay storage fees. The
8 solution, expanding their home offices into a multipurpose space, fit their needs on all accounts.

9
10 9. Being unable to remodel their existing home offices to meet their broader needs or add
11 on to their residence, and failing to purchase an adjacent house as a means for expanding their
12 residence across two adjoining properties, they finally ascertained that the consolidated features of
13 a much expanded residence could be conveniently allocated across non-adjacent properties, and
14 looked at nearby PELICAN as a possible location for a portion of their expanded residence. Since
15 one of the uses contemplated for the expansion was a virtual office for their consulting practice, they
16 carefully reviewed the PELICAN CC&R’s and found that professional offices were specifically
17 allowed as well as the simple remodeling envisioned to perfect the space to fit their various needs.
18 However, in an abundance of caution, the JOHNSONS, in writing, specifically asked PELICAN and
19 PML to confirm that they could modify the proposed space and, even more importantly, that they
20 could operate their professional virtual office from the condominium. The JOHNSONS made it
21 clear that affirmative confirmation was a contingency that would have to take place in order for them
22 to go through with the purchase. PELICAN and PML via PML confirmed in writing that the
23 JOHNSON’S could make the small architectural additions contemplated, and that they could operate
24 their professional business from the home. In reliance on these representations the JOHNSONS
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26
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28

1 went forward with the purchase of 61 Cove Lane, Redwood City, California, and after securing the
2 approval of the Redwood City Planning Department, added improvements in accordance with the
3 CC&R's and applicable building codes.

4 10. Thereafter, in addition to pursuing their personal interests and hobbies, the JOHNSONS
5 began operating their virtual office. The nature of their practice, refined over 18 years, made it
6 simple for them to remain in total compliance with the CC&R's, as the JOHNSONS held and hold
7 all client meetings exclusively at each client's venue offsite. This also ensured that there was and
8 would be no foot traffic or client meetings taking place at the residence. In addition, the
9 JOHNSONS took and take all deliveries or parcels to be sent to clients and others to the parcel
10 delivery firm's offices, put up no signs and ensured that there were no noises coming from the home.
11 Their only concession to having a virtual office at PELICAN was to list the PELICAN address as
12 their mailing address on the ROEDER-JOHNSON website, which was not precluded by the
13 CC&R's. In short, there was and is no difference between the JOHNSONS' residence and any other
14 home in PELICAN. Inside, their home offices are no different than well-equipped home offices
15 elsewhere in Redwood Shores, Silicon Valley, or even, presumably, in other units in PELICAN.

16 11. Thereafter, PELICAN informed the JOHNSONS that they had received a complaint from
17 a homeowner, DOE ONE, who had observed that there was office furniture in the JOHNSONS'
18 residence and that they were conducting a business from the home which was prohibited
19 [notwithstanding the CC&R's which allow such use and PELICAN'S and PML'S previous
20 representations]. PELICAN demanded to "inspect" the home. The JOHNSONS, through counsel,
21 then explained the situation including the fact the CC&R's allowed for their business and that
22 PELICAN and PML had expressly in writing represented to them that they could conduct a
23 professional business prior to their purchasing the home. PELICAN ignored the JOHNSONS'
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1 efforts to resolve the dispute and, finally, simply stated "We want to see what's in there." The
2 JOHNSONS refused PELICAN'S efforts to intrude on the quiet enjoyment and use of their
3 residence. Nonetheless, the JOHNSONS offered an inspection if PELICAN first ascertained which
4 other homeowners were conducting businesses from their home or home offices and then inspected
5 such homeowners' homes as well. The JOHNSONS also offered to supply PELICAN with the city-
6 approved drawing showing their improvements. PELICAN refused and indicated that it would 'Take
7 the next step.'

9 12. Plaintiffs reasonably relied on the representations of Defendants that they could make
10 specific improvements and, as one of the uses of the residence, that they could conduct their virtual
11 professional consulting business from the residence, and purchased the property, constructed their
12 additions in conformity with the CC&R's and building codes, created a virtual office with an internet
13 connection and the PELICAN mailing address, and began using their home office to pursue their
14 hobbies as well as a portion of the telephone and computer-centric activities demanded by their
15 consulting business.

17 13. The Defendants now assert that the representations they made as set forth above were
18 false in that they claim that Plaintiffs were not allowed to remodel their residence to conform to their
19 personal needs and that Plaintiffs are not allowed to conduct a virtual business from their home
20 office as one of the uses of the residence. Thus, when Defendants made the representations set forth
21 above they knew they were false and they knew that Plaintiffs would be induced to purchase the
22 home and set up their virtual consulting business from the home and expend monies to remodel the
23 home in reliance on the representations.

25 14. As a direct and proximate result of the fraudulent representations of Defendants,
26 Plaintiffs have been damaged by paying to purchase the home including closing costs, and other
27

1 expenses associated with the purchase; paid monies and fees to improve and add to their residence;
2 moved furniture from their former, unneeded commercial office space to the home; and paid monies
3 to set up and run their virtual professional consulting business from their residence. The exact
4 amount of the aforesaid damages is not yet fully ascertained but is in excess of the jurisdictional
5 limits of this Court and shall be established according to proof at time of trial.
6

7 15. The actions of Defendants, PELICAN and PML, were done wilfully, with malice,
8 oppression, and fraud and in conscious disregard of Plaintiffs' rights and with the intent to defraud,
9 vex, annoy and harass Plaintiffs and Plaintiffs are thereby entitled to exemplary and punitive
10 damages from said Defendants in an amount according to proof.
11

12 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth;

13 **SECOND CAUSE OF ACTION**
14 (Negligent Misrepresentation)

15 16. Plaintiffs refer to paragraphs 1 through 6 of their Allegations Common to All Causes
16 of Action, paragraphs 8 through 14 of their First Cause of Action, and incorporate them herein by
17 reference as though fully set forth again herein.

18 17. Said Defendants made the representations set forth hereinabove without believing them
19 to be true in that said Defendants had in their possession information which, according to
20 Defendants, directly contradicted the representations.
21

22 18. Defendants were aware that the representations made to Plaintiffs were not accurate in
23 light of the information they had in hand at that time as alleged hereinabove. Defendants also
24 undertook to conceal from Plaintiffs their lack of information and their failure to make the
25 representations accurately.
26

27 19. The representations of Defendants as aforesaid were made with the intent to induce
28 Plaintiffs to act as set forth hereinabove.

1 20. As a direct and proximate result of the fraudulent representations of Defendants,
2 Plaintiffs have been damaged by paying to purchase the home including closing costs, and other
3 expenses associated with the purchase; paid monies and fees to remodel their residence; moved
4 furniture from their former office to the residence; and paid monies to set up and run their virtual
5 professional consulting business from their residence. The exact amount of the aforesaid damages
6 is not yet fully ascertained but is in excess of the jurisdictional limits of this Court and shall be
7 established according to proof at time of trial.
8

9 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth;

10 **THIRD CAUSE OF ACTION**
11 (Declaratory Relief)

12 21. Plaintiffs refer to paragraphs 1 through 6 of their Allegations Common to All Causes
13 of Action, paragraphs 8 through 14 of their First Cause of Action, paragraphs 17 through 20 of their
14 Second Cause of Action and incorporate them herein by reference as though fully set forth again
15 herein.
16

17 22. An actual controversy has arisen and now exists between Plaintiffs and PELICAN
18 concerning their respective rights and duties in that Plaintiffs contend that they lawfully and in
19 compliance with applicable CC&R's made improvements to their residence, designated as one of
20 the uses of the residence a virtual professional consulting business and that they are in full
21 compliance with all applicable CC&R's whereas Defendant, PELICAN, disputes these contentions
22 and contends that Plaintiff were prohibited from making improvements to their residence, are
23 prohibited from carrying on any business from the residence and that it has the right to "See what's
24 in there."
25

26 23. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as
27 to whether their interpretation of the attached CC&R's, Exhibit A, is correct and that they were
28

1 entitled to make additions to their residence and conduct a virtual professional consulting business
2 as one of the uses of the residence.

3 24. A judicial declaration is necessary and appropriate at this time under the circumstances
4 in order that Plaintiffs may ascertain their rights and duties under the CC&R's in light of their need
5 to conduct their virtual business and properly service their clients and obtain new assignments.
6

7 25. As a direct and proximate result of the fraudulent representations of Defendants,
8 Plaintiffs have been damaged by paying to purchase the home including closing costs, and other
9 expenses associated with the purchase; paid monies and fees to upgrade the interior of their home;
10 moved furniture from their former rental office to the residence; and paid monies to set up and run
11 their virtual professional consulting business from their residence. The exact amount of the aforesaid
12 damages is not yet fully ascertained but is in excess of the jurisdictional limits of this Court and shall
13 be established according to proof at time of trial.
14

15 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth;

16 **FOURTH CAUSE OF ACTION**
17 (Enforcement - Specific Performance)

18 26. Plaintiffs refer to paragraphs 1 through 6 of their Allegations Common to All Causes
19 of Action, paragraphs 8 through 14 of their First Cause of Action, paragraphs 17 through 20 of their
20 Second Cause of Action and incorporate them herein by reference as though fully set forth again
21 herein.
22

23 27. Defendant, PELICAN, has failed and refuses to adhere to, abide by and follow the
24 CC&R's governing the association and Plaintiffs' use and quiet enjoyment of their residence and
25 threatens to invade Plaintiffs' privacy and to continue to harass and annoy them.

26 28. Plaintiffs have no adequate remedy at law to ensure their continued lawful use and
27 peaceful enjoyment of their residence and to prevent PELICAN and its agent, Defendant, PML,
28

1 from continuing to make false claims and demands as to the force and effect of the CC&R's.

2 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth;

3 **FIFTH CAUSE OF ACTION**

4 (Negligent Interference With Economic Advantage)

5 29. Plaintiffs refer to paragraphs 1 through 6 of their Allegations Common to All Causes
6 of Action, paragraphs 8 through 14 of their First Cause of Action, paragraphs 17 through 20 of their
7 Second Cause of Action and incorporate them herein by reference as though fully set forth again
8 herein.

9
10 30. After Plaintiffs had confirmed with Defendants that they could conduct their professional
11 consulting business from their residence and after they had gone forward and purchased the residence
12 in reliance on Defendants' representation, Plaintiffs began working for and with clients and
13 prospective clients. Although there is no foot traffic, there are no client meetings and there are no
14 deliveries emanating from the residence, the Defendants' persistent demands and threats have
15 interfered with Plaintiffs' business. Plaintiffs are fearful that they are being watched and that at any
16 moment an agent of Defendants will come to their door and demand entrance. They are concerned
17 that Defendants and their agents may be intruding on their privacy and work by trespassing on their
18 land and looking in windows. The Plaintiffs have, in light of Defendants' conduct, demands and
19 threats curtailed their work and have been hesitant to even use the residence.
20

21
22 31. As a direct and proximate result of Defendants' actions, Plaintiff have suffered monetary
23 losses and have been emotionally traumatized and harmed in an amount subject to proof at time of
24 trial.

25 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth;

1 emotional distress and harm.

2 37. The acts of Defendants, and each of them, have caused Plaintiffs to incur general
3 damages including the infliction of mental and emotional anguish, distress and suffering which has
4 caused Plaintiffs to become ill, nervous and upset to the detriment of their health in an amount not
5 yet fully ascertained but subject to proof.
6

7 38. Each of the aforesaid actions was done wilfully, fraudulently, maliciously, oppressively
8 and in conscious disregard of Plaintiffs' rights and with the intent to inflict severe emotional distress
9 and mental anguish upon Plaintiffs and Plaintiffs are therefore entitled to recover punitive damages
10 in an amount according to proof.

11 WHEREFORE, Plaintiffs pray judgment as follows:

12 **FIRST, FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION**

- 13
- 14 1. Compensatory, general and special damages according to proof at time of trial;
 - 15 2. Prejudgment interest on all damages;
 - 16 3. Punitive damages;
 - 17 4. Attorneys' fees;
 - 18 5. Costs of suit incurred herein;
 - 19 6. Such other and further relief as the Court may award.

20 **SECOND CAUSE OF ACTION**

- 21
- 22 1. Compensatory, general and special damages according to proof at time of trial;
 - 23 2. Prejudgment interest on all damages;
 - 24 3. Costs of suit incurred herein;
 - 25 4. Such other and further relief as the Court may award.
- 26
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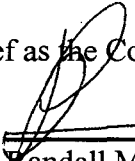
THIRD CAUSE OF ACTION

1. Compensatory, general and special damages according to proof at time of trial;
2. Interest on all damages at the legal rate from the date of termination;
3. For a declaration that the Plaintiffs remodeling was in conformity with the CC&R's and applicable building codes and that they were and are, as one use of their residence to conduct their professional consulting business known as Roeder-Johnson Corporation from the residence.
4. Attorneys' fees;
5. Costs of suit incurred herein;
6. Such other and further relief as the Court may award.

FOURTH CAUSE OF ACTION

1. Compensatory, general and special damages according to proof at time of trial;
2. Prejudgment interest on all damages;
3. For a temporary and permanent injunction prohibiting Defendants and their agents, servants, employees and all persons acting under, in concert with or for them to cease making demands upon Plaintiff for entry to Plaintiff's home and compelling them to allow Plaintiffs to conduct their business and prohibiting them from interfering with Plaintiffs lawful use and enjoyment of their residence;
4. Attorneys' fees;
5. Punitive damages;
6. Statutory damages;
7. Costs of suit incurred herein;
8. Such other and further relief as the Court may award.

DATED: 10/26/07



Randall M. WIDMANN
Attorney for Plaintiffs



EXHIBIT A

A



EXHIBIT A

Recorded at the Request of:
Board of Directors
PELICAN COVE CONDOMINIUM ASSOCIATION




When recorded mail to:
PML Management Corporation
655 Mariners Island Blvd #301
San Mateo, CA 94404

CONTEMPORARY CC&RS.

424

AMENDED DECLARATION
OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
PELICAN COVE
CONDOMINIUM ASSOCIATION

X 
Buyer

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

**AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PELICAN COVE CONDOMINIUM ASSOCIATION**

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**AMENDED DECLARATION
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**AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PELICAN COVE CONDOMINIUM ASSOCIATION**

This Declaration of Covenants, Conditions and Restrictions of PELICAN COVE CONDOMINIUM ASSOCIATION. ("Declaration" or "CC&Rs") is an amended version of the original Declaration entitled "Pelican Cove Condominiums Enabling Declaration, Establishing a Plan for Condominium Ownership" which was recorded in the office of the San Mateo County Recorder on February 27, 1981 as Document No. 18803AS, and as may have been subsequently amended (hereinafter "Former Declaration").

RECITALS

- 1 Legal Description. This Declaration governs all of the real property and improvements thereon located in the City of Redwood City described as:
- 2 Pelican Cove Condominiums, as shown on that certain map entitled "Pelican Cove," filed on October 20, 1980 in Book 102 of Maps at pages 77 - 84, inclusive.
- 3 The Property There are 162 Units in Pelican Cove which is a Condominium project within the meaning of the provisions of the California Davis-Stirling Common Interest Development Act (commencing at California Civil Code section 1350). Attached as Exhibit A is a site map generally depicting the Project. It is included for convenient reference and not as part of any legal description.
- 4 This Amended Declaration. The Association determined that its Former Declaration is outdated. Therefore the Members caused this Declaration to supersede the Former Declaration. This Declaration is for the purpose of enhancing and protecting the value, enjoyment, safety, desirability and attractiveness of Pelican Cove.
- 5 Applicability of Restrictions. As amended, these covenants, conditions and restrictions shall run with the Project and shall be binding on all parties having or acquiring any right, title or interest in any portion of the Project in the same manner as the Former Declaration, and shall be for the benefit of all Owners.

ARTICLE I
DEFINITIONS

- 1.1 "Articles" means the Articles of Incorporation of Pelican Cove Condominium Association, as amended from time to time.
- 1.2 "Assessment" means a Regular, Special, Emergency or Reimbursement Assessment made or assessed against an Owner and his or her Unit in accordance with the provisions of Article IV of this Declaration.

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- 1.3 "Association" means: PELICAN COVE CONDOMINIUM ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns, the Members of which shall be the Owners of the Condominiums within the Project.
- 1.4 "Board" or "Board of Directors" means the governing body of the Association.
- 1.5 "Bylaws" means the Bylaws of the Association, as may be amended from time to time.
- 1.6 "Common Area" means the Condominium Common Area, including Exclusive Use Common Area, and the Recreational Common Area.
- 1.7 "Condominium" means the Unit, together with the undivided interest in the Condominium Common Area conveyed in fee to an Owner, and all related easements. See generally California Civil Code sections 783 and 1351(f).
- 1.8 "Condominium Building" means a residential structure containing Condominium Units.
- 1.9 "Condominium Common Area" means all of the property (excepting the individual Units,) within the outer perimeter walls of each Condominium , excluding patios and decks. The Condominium Common Area includes, without limitation:
- a) Outside perimeter walls, bearing walls, columns, girders, ceiling joists, beams in cathedral ceilings, weatherproofing, unfinished floors, roofs, foundations, chimneys and flues, reservoirs, tanks, pumps, motors, ducts and chutes,
 - b) Central hot water heaters, conduits, pipes, plumbing, wires, utility meters and other utility installations to the Unit receptacle or box containing the switch or outlets,
 - c) Fire alarm systems, and heat sensor fire alarm systems in each building (it does not include battery operated smoke or other detectors/alarms), and
 - d) Interior and exterior sprinklers and sprinkler pipes, sewers, storm drainage pipelines, catch basins, sanitary sewer lines, cleanouts.
- 1.10 "Declaration" means this amended Declaration and any further amendments. The term Declaration is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&Rs".
- 1.11 "Exclusive Use Common Area" means those portions of the Condominium Common Area designated for the exclusive use of one or more, but fewer than all, of the Owners of the Units. Exclusive Use Common Area is a subpart of Condominium Common Area distinguished by different rights and responsibilities from Condominium Common Area. To the extent not expressly included within the definition of Unit area, Exclusive Use Common Area shall include:
- a) Components as originally designed and constructed, or added by an Owner, including exterior components such as steps, stoops, patio slabs, upper patio floor coverings, decks, framing and surface planks, landscaping, water pipes and valves, irrigation systems, light fixtures, electrical outlets and switches;
 - b) Door bells, entry light fixtures, patios, decks, door frames, and hardware incident thereto, gates, or other fixtures designed to serve a single separate interest;

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- c) exterior stairs adjacent to and providing access only to a particular Unit; attic space adjacent to the Unit with access (albeit restricted);
 - d) Carports, storage areas; and
 - (1) To the extent not part of the Unit itself, chimneys and fireplace flues, dryer vents, utility lines (including but not limited to telephone, water, waste, electrical, and cable television) serving a single Unit (wherever located), and any applicable vent, receptacle or other component within or exclusively serving the Unit area.
- 1.12 **"Governing Documents"** means collectively this Declaration, the Bylaws, Articles, rules, and any formal policies adopted by the Board, and any amendments to such documents.
- 1.13 **"Map"** means that combined Map and Condominium Plan entitled "Pelican Cove" recorded the 20th day of October 1980, in Book 102 of Maps at pages 77 through 84, in the official records of San Mateo County.
- 1.14 **"Member"** means a Person who holds membership in the Association and is synonymous with the term "Owner".
- 1.15 **"Mortgage"** means a Deed of Trust, as well as a Mortgage.
- 1.16 **"Mortgagee"** means a beneficiary (such as a bank) under a Mortgage and/or Deed of Trust.
- 1.17 **"Owner"** means the record holder(s) of title, whether one or more Persons or entities, of a fee simple interest or undivided fee interest in any Condominium. This includes contract purchasers, but excludes Persons having any interest merely as security for the performance of an obligation.
- 1.18 **"Person"** means a natural person, corporation, partnership, trustee or other legal entity. This term includes any Owner, Member, a family member, tenant, resident, guest or invitee.
- 1.19 **"Project"** means all of the real property of the Pelican Cove condominium complex and includes all Units, structures and Condominium and Recreational Common Areas.
- 1.20 **"Recreational Common Area"** means the entire Project except Unit area and except for the Condominium Buildings. The Recreational Common Area consists of Parcel "A" and Parcel "B" as shown on the Map. Recreational Common Area includes:
- a) Parking areas, equipment areas, boat racks and launch area, swimming pool, swimming pool furniture, Jacuzzi, recreation building, clubhouse air conditioner, heater and furnishings, mail boxes, fences, driveways, private streets and walks, wooden benches, open spaces, planted and landscaped areas, and all other improvements which may be placed upon or located in the Recreational Common Area.
- 1.21 **"Unit"** means the separate interest as defined in Civil Code section 1351(4). The boundaries of each Unit shall be the interior unfinished surfaces of the perimeter walls, floors (surfaces and sub-base), ceilings, and includes doors, doorframes and trim, and windows (including glass) and window frames. Each Unit includes the airspace encompassed by its boundaries. The Unit expressly includes, but is not limited to:

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- a) the interior finish materials of walls, ceilings, textured ceiling material, carpeting, interior and/or exposed surfaces of the fireplaces (excluding the flue), floors, fixtures, cabinets, interior doors, exterior sliding glass doors, windows, weather-stripping, screens and appurtenant hardware and locks, light fixtures,
- b) toilets, showers, bathtubs, sinks, drains and drain seals, as well as bathroom and kitchen plumbing fixtures, fans, valves, washers, gaskets, tile, grout, caulking and waterproof elements of any bathroom and kitchen surface, including behind tiles.
- c) Electrical switches, receptacles, boxes and panels, fuses, circuit breakers, battery operated smoke detectors and similar alarms, space heating panels in the ceiling of the Unit, utility systems, components, fixtures and extensions thereof and appliances which are located wholly within the boundaries of a Unit or are recessed in the wall of the Unit and accessible from the Unit, and which service only that Unit are also part of the Unit.

ARTICLE II
PROPERTY RIGHTS

- 2.1 **Condominium Common Areas.** Each Owner shall have, as appurtenant to his or her Unit, an equal undivided interest in the Condominium Common Area of the Condominium Building in which his or her Unit is located. The fractional interest of an Owner shall be the numerator "1" over the denominator equal to the total number of Units in the Condominium Building in which the Unit is located. The ownership of each Condominium shall include a Unit and such undivided interest in the Condominium Common Area. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected and seventy-five percent (75%) of the holders of first Mortgages on the Units (based on one (1) vote for each first Mortgage owned). Such common interest cannot be separated from the Unit to which it is appurtenant. Each Owner may use the Condominium Common Area and Recreational Common Area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon any other Owners.
- 2.2 **No Partition.** Except as provided by California Civil Code section 1359, there shall be no judicial partition of the Project or any part, nor shall any Person acquiring an interest in the Project or any part seek any judicial partition, provided, however, that if any Condominium is owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing in this Declaration shall be deemed to prevent a judicial partition as between co-tenants.
- 2.3 **Encroachment Easements.** Each Condominium within the Project has an easement over all adjoining Condominiums and the Common Area for the purpose of accommodating any encroachment due to minor errors in original construction, reconstruction, repair, settlement, shifting, or movement of the building or any other case. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for

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encroachment be created in favor of an Owner of said encroachment occurred due to the intentional conduct of said Owner. In the event a structure is partially or totally destroyed, then repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums of Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units (if any) where air-conditioning equipment is installed, an easement over the Common Area into which the air-conditioning equipment encroaches shall exist for the purpose of maintenance, replacement, and repair of said equipment.

- 2.4 **Easements for Utilities and Maintenance.** Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown in the recorded Map of the Project and as may be required or needed to service the Project, are reserved by the Association, together with the right to grant and transfer the same.
- 2.5 **Master Declaration.** The Project is part of a larger area of land, consisting of various parcels, all of which are subject to a Master Declaration ("Declaration of Covenants, Conditions and Restrictions for Redwood Shores Owners Association") which provides, among other things, for an umbrella association ("Redwood Shores Owners Association"). The Master Declaration (recorded on the 13th day of February 1981, File No. 14180-AS, San Mateo County Records) provides that membership therein is required, is appurtenant to each Unit and occurs automatically upon transfer of title to a Unit.

ARTICLE III **ASSESSMENTS**

- 3.1 **Assessments Generally.** Each Member, by acceptance of a deed, is deemed to covenant and agrees to pay to the Association Assessments, together with interest, late charges, costs, and legal fees, which shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made. Each such Assessment and charge shall also be a joint and several personal obligation of each Person who holds an ownership interest in such property at the time when the Assessment becomes due and payable. All delinquent Assessments shall be subject to the provisions of Section 3.3.
- a) **Regular Assessments.** The Board shall establish for each fiscal year an Annual Assessment to be allocated among all Units in the manner set forth on the attached Exhibit B and (unless otherwise provided) payable in twelve (12) equal monthly increments. Such monthly payments shall be due on the first day of each month and be delinquent if not received by the Association by the 15th of the month.
- b) **Special Assessments.** Special Assessments shall be allocated in the same manner as Regular Assessments among all Units, unless otherwise determined by the Board for good cause. Special Assessments may be levied for the purpose of defraying, in whole or in part, actual or estimated revenue

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shortfalls in the budget adopted by the Board for the fiscal year or such other purposes as the Board deems appropriate.

c) Reimbursement Assessments.

- (1) Definition. A Reimbursement Assessment is a charge against any Member (and/or tenant) and the Member's Condominium. It may be levied where a failure to comply with the Governing Documents or other misconduct by any Member, or the lessees, guests, agents, employees, licensees, or invitees of a Member has (i) necessitated or will necessitate an expenditure of monies by the Association, (ii) resulted in the imposition of a fine or penalty, or (iii) caused any increase in the premiums for or reduction in coverage of Association insurance. It may also be levied by mutual agreement between a Member and the Association.
- (2) Determination. Unless otherwise agreed between the Association and Member, if the Association finds a Reimbursement Assessment may be appropriate, before levying it, the Association must provide reasonable notice to the individual and provide an opportunity, for individual response in writing or in person to the Association. After due consideration, the Association may decide whether or not to levy, collect or otherwise enforce the Reimbursement Assessment.
- (3) Collection. A Reimbursement Assessment shall be due and payable to the Association when levied or such later time as may be set. A Reimbursement Assessment may be collected in the same manner as regular Assessments.

3.2 Assessment Level Increases.

- a) Approval of Board of Directors. The Board may impose a regular Assessment up to and including a twenty percent (20%) increase over the aggregate regular Assessment levied in the Association's preceding fiscal year. In order to exercise this discretionary power to increase regular Assessments, the Association must have complied with Civil Code section 1365(a) [See Exhibit B, at Section 1(a)]. The Board may impose special Assessments which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The Board also has the power to levy an emergency Assessment pursuant to Article III, Section 3.1(b).
- b) Approval of the Members. Assessments may be increased above the amounts set forth in Section 3.2(a) above, only with the approval of a majority of a quorum of Members. For purposes of this section, quorum means more than fifty percent (50+%) of the Members of the Association. (Based on 162 Units, this would require participation by the voting power of at least 82 Units and the approval by a majority of those participating in the vote.)
- c) Notice. The Association shall provide notice by first-class mail to Members of any increase in the regular Assessment or special Assessments, not less than thirty (30) days nor more than sixty (60) days prior to the increased Assessment becoming due.

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3.3 Enforcement of Assessments.

- a) Delinquency. The Association shall adopt and distribute a collection policy which shall provide for the enforcement of Assessments, including the provisions set forth below. If an Assessment is delinquent, the Association may require payment of all of the following:
- (1) reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorney's fees,
 - (2) a late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10), whichever is greater,
 - (3) interest on all sums imposed, including the delinquent Assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.
- b) Returned Checks. A Member who writes a check to the Association which is returned for any reason shall pay a reasonable charge set by the Association for processing such check. If the check cannot be negotiated, payment shall be demanded in accordance with California Civil Code section 1719, which is entitled "Treble Damages for Failure to Pay Amount of Dishonored Check."
- c) Acceleration of Annual Assessment. If any monthly installment of the regular Assessment is delinquent for a period of more than sixty (60) days or a Member is delinquent three (3) or more times within twelve (12) months, the Association may declare the entire balance of the annual Assessment (plus any other outstanding Assessment) immediately due and payable in full, together with any other delinquent amounts. Late charges and interest shall not accrue on the accelerated Assessment amount unless or until each installment would otherwise become due.
- d) Lien. There is a present lien with power of sale against each Condominium to secure payment of all Assessments levied against the Condominium. This includes all additional charges and sums which become due and payable after the date of recordation of a notice of delinquent Assessment. A lien under this Article is prior to all other liens on a Unit except (1) liens recorded before the recordation of this Declaration, (2) a first mortgage or deed of trust on the Unit recorded prior to the date on which the Assessment sought to be enforced became delinquent, and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. The lien is also prior to mortgages and deeds of trust recorded after this Declaration to the extent of the regular Assessment based on the periodic budget adopted by the Association which would have become due in the absence of acceleration plus reasonable legal fees and costs incurred or accrued during the six months immediately preceding the trustee sale of other foreclosure related conveyance. This section does not affect the priority of mechanics' or materialmen's liens, or the priority of other Assessments or other charges made by the Association.
- e) Non-judicial Foreclosure. The Association shall have the power to conduct non-judicial foreclosure in order to collect delinquent Assessments. (The power of non-judicial foreclosure does not apply to liens resulting from fines). Each Member hereby appoints as trustee the Person designated by the Association as "trustee" in the Notice, or such substitute trustee as is

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designated pursuant to Civil Code section 2934(a). Additionally, such Member empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Civil Code section 1367(d), or by judicial foreclosure. Each Member further grants to the trustee the power and authority to sell the Condominium of any defaulting Member to the highest bidder to satisfy such lien.

f) Lender Notification. In the event a Member becomes delinquent in payment of Assessments, the Association may notify that Member's Mortgage holder(s) of such delinquency.

g) Other Recourse.

(1) The Association may bring an action at law against the Member personally obligated to pay the delinquent Assessments, and/or foreclose (whether by judicial or non-judicial foreclosure) its lien against the Member's Condominium.

(2) Further, the Association may exercise any and all legal rights it may also have to cause the collection of delinquent Assessments. The Association, acting on behalf of the Members, shall have the power to bid for the Condominium at the foreclosure sale and to acquire and hold, lease, Mortgage and convey the Condominium.

3.4 Grantee Liability.

a) Voluntary Conveyance. Where a Member voluntarily conveys part or all of that Member's interest in a Condominium, the Person acquiring the interest takes subject to all Assessments and charges (delinquent or not) outstanding against the Condominium at the time of the conveyance. Both parties are jointly and severally liable for the full amount. Upon request of a Member, the Association shall provide a true statement in writing from an authorized representative of the Association as to any Assessments and/or other charges levied upon the Member's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Member's Condominium.

b) Conveyance by Foreclosure. In the event of a foreclosure of a first Mortgage and trustee sale, the Person acquiring title, his or her successors and assignees, shall not be liable for Assessments chargeable to such Condominium which became due and payable prior to the acquisition of title by such acquirer. Nothing in this section shall be construed to relieve any Person acquiring a Condominium by foreclosure from their obligation to pay monthly increments of the annual Assessment otherwise due and payable subsequent to their acquisition.

3.5 No Waiver or Offset. No Member may exempt himself or herself from personal liability or release his or her Condominium from liens and charges by waiver of any Member rights or by abandonment or non-use of any Condominium. Each Member, to the extent permitted by law, waives the benefit of any homestead or exemption law of California in effect at the time that any Assessment or installment becomes delinquent or any lien is imposed (see generally *Lien Exception to Homestead Right* - Code of Civil Procedure Section 703.010(b)). No offsets or deductions against any assessment shall be permitted for any reason.



including, without limitation, any claim that the Association is not properly discharging its duties.

ARTICLE IV
DUTIES AND POWERS OF THE ASSOCIATION

The Board shall have the power and authority to conduct the business of the Association, except as may be limited by the Governing Documents or the law. In addition to those powers and duties set forth in the Bylaws, the Board, for the benefit of the Condominiums and the Owners, shall generally enforce the provisions of the Governing Documents, shall exercise its discretion, shall procure, pay for and/or otherwise perform its duties, including the following:

- 4.1 **Insurance.** The Association shall have the power and obligation to obtain and maintain in effect the insurance described in Article VIII.
- 4.2 **Discharge of Liens.** Pay, bond around or otherwise cause the discharge of any lien or encumbrance, including taxes, levied against any Condominium which, in the opinion of the Board, may constitute a lien against the Common Area. The Association shall, however, levy a Reimbursement Assessment.
- 4.3 **Taxes.** Pay all taxes and assessments, if any, levied or assessed separately against the Common Area.
- 4.4 **Legal and Accounting.** Procure and pay for legal and accounting services necessary or proper for conducting the Association's business.
- 4.5 **Other Obligations of the Board.** Procure and pay for any other goods, materials, supplies, labor, services, painting, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is authorized to secure or pay for pursuant this Declaration or by law, or which is reasonably necessary in the discretion of the Board for the convenient operation of the Common Area.
- 4.6 **Utilities.** Procure and pay for water, gas, electric service, refuse collection, janitorial or window cleaning service, cable television, sewage, telephone and other necessary utility service for the Common Area and (to the extent not separately metered or charged) for the Units.
- 4.7 **Common Area Services.** Procure and pay for gardening and landscaping services, as well as maintaining, and cleaning any portion of the Common Area.
- 4.8 **Manager.** The Association shall have the authority to employ a manager managing agents, who is subject to the direction and control of the Board, to perform all or any part of the duties and responsibilities of the Association.
- 4.9 **Authority for Reasonable Entry for Maintenance or Construction.** For the purpose of performing the construction, maintenance or emergency repair for the benefit of the Common Area or the Owners, the Association's agents or employees shall have the right, after reasonable notice (not less than 24 hours except in emergencies) to the Owner, to enter any Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the resident as practicable and any damage caused shall be repaired at Association expense. Non-resident Owners shall be responsible for advising any tenant(s) or lessee(s) residing in the Unit. However, the Association may also advise the tenant(s)/lessee(s) directly.



- 4.10 Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Association.
- 4.11 Dedication. The Association, as the agent of all Owners, shall have the power to dedicate all or any part of the Common Area to an appropriate public agency, authority or utility for public use, provided that any such dedication shall have the assent of a majority of the total voting power of the Association. The Board may grant Common Area easements or licenses to utility companies or public entities, so long as the grant in whole or in part benefits the Owners and does not significantly interfere with the Owners' use of the Common Area.
- 4.12 Use of Recreational Facilities. The Association shall have the power to limit the number of guests who may use the recreational facilities. In addition, the Association shall have the power to impose and collect reasonable fees for the use of Common Area recreational facilities. Owners forego the use of the recreational facilities during the time that the Owner's Condominium is occupied by a tenant or lessee.
- 4.13 Rules.
- a) Rule Making and Policy Making Power. The Board may propose, enact and amend rules and/or policies of general application to the Members relating to the use of any part of the Project by the Members and other Persons, including guests. Such subjects may include parking, recreational vehicle and trailer parking, renters, storage, trash and garbage disposal, use of recreational facilities, laundry, pets, signs, holiday decorations, displays, and activities which might adversely affect the Project or its appearance or might offend, inconvenience, annoy or endanger the Owners or residents.

The rules shall not, however, be inconsistent with or materially alter any provision of the Articles, Bylaws or Declaration. In the event of any material conflict, the provision contained in the Articles, Bylaws or Declaration shall be deemed to prevail.
 - b) Amendment and Distribution of Rules and Policies. The rules and/or policies may be amended by majority vote of the Board. Amendments shall be distributed to the Members either by mail or delivered to each Unit, or posted in a conspicuous place within the Common Area. The Board shall not be obligated to provide more than one copy per Unit. Any amendment shall become effective upon distribution, posting, or at such later date as the Board may specify.
 - c) Breach of Rules and/or Policies. Any breach of the rules and/or policies shall give rise to the rights and remedies set forth in Article XII hereof.

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ARTICLE V
RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

- 5.1 Association and Owner Responsibilities for Maintenance, Repair and Replacement. Where repair or replacement of components crosses lines of responsibility, the Association may undertake the work and charge the Owner an appropriate amount and/or impose a reimbursement Assessment.

- a) Common Area. The Association shall be responsible for the maintenance, repair, replacement, management, operation, and upkeep of the Common Area (excluding Exclusive Use Common Area).
- b) Unit Areas. Each Owner shall keep the interior of the Owner's Unit, including fixtures and appliances, in good repair and condition. Each Owner shall have the sole responsibility and the exclusive right, at the Owner's expense, to:
- (1) Decorating and Alterations. Paint, repaint, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of walls, ceilings, floors, windows and doors bounding the Owner's Unit. Notwithstanding these rights, unless there is prior Association approval, no alteration may be made which will increase sound transmission from one Unit to another. Owners shall not replace carpet with hardwood floors, tile, linoleum or other hard surfaces unless prior written approval of the Board is received. Further, window coverings visible from the exterior may be regulated by the Association guidelines;
 - (2) Windows and Sliding Glass Doors. Maintain windows and sliding glass doors. This may include periodic cleaning of window weep holes, as well as sealing the bottom tracks, including corners, to keep moisture in the tracks from damaging the Unit and the Common Area walls adjacent to the window and/or sliding glass door. This may also include periodic checking and replacing of inadequate gaskets, putty, caulk or other material which holds the glass to the sash and lubrication of the tracks, wheels and operating hardware of windows and sliding glass doors;
 - (3) Screens. Repair and replace window screens and screen doors. Replacement window screens and screen doors must be approved in advance by the Association and/or must conform to Association standards;
 - (4) Appliances. Maintain appliances (which are personal property), including dishwashers, refrigerators, washers, dryers, ovens, ranges, microwave ovens, garbage disposals;
 - (5) Waterproof Integrity of Surfaces. Maintain the waterproof integrity of Unit surfaces such as in kitchens and bathrooms and including tiled areas, showers, shower pans, and tubs;
 - (6) Personal Property. Maintain, repair and replace fixtures and personal property which utilize water (such as toilets, dishwashers and laundry machines) in such a manner that they will not cause water or other damage to adjacent areas. Owners shall also keep sinks, bathtubs, showers, laundry machines and toilets from overflowing;
 - (7) Other. Maintain, repair and/or replace the components identified in the definition of Unit herein.
- c) Exclusive Use Common Area. The responsibility for the maintenance, repair and replacement of Exclusive Use Common Area shall be as follows:
- (1) Decks and Balconies. The Association shall be responsible for the repair and replacement of the deck and balcony components caused by

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normal wear and tear. In order to accomplish this work, the Association may be required to block access to Units for a period of time. If necessary, the costs of such temporary loss of use (if any) shall be borne by the Owner or other resident of the Unit affected. The Board may adopt guidelines which reasonably require Owners to perform certain aspects of maintenance of decks and balconies.

- (2) Front Doors. The Owner shall be responsible for the maintenance, repair and replacement of front doors and all related hardware, including hinges and locks. The Association shall be responsible for painting the exteriors of the front doors.
- (3) Patios. The Owner shall keep each patio free and clear of accumulations of water, and shall make all repairs thereto resulting from his or her negligence, misuse or neglect. The Owner shall maintain the landscaping within his or her private patio area, keeping the same in good condition.
- (4) Fireplace and Chimney Flue. The Owner shall be responsible for periodic cleaning of the fireplace flue. The Association may, at its discretion, periodically coordinate or otherwise implement chimney flue cleaning. Firebox liners or stone panels are an Owner responsibility. The Association shall repair and replace the box, flues and caps where necessary due to normal wear and tear. The Association may periodically require Owners to provide it with either (i) a signed statement of non-use, (ii) evidence of inspection and good condition, or (iii) evidence of timely cleaning.
- (5) Irrigation Systems. The Association shall maintain, repair and/or replace the irrigation systems.
- (6) Heating and Ventilation System. The Owner shall be responsible for all aspects of maintenance, repair and replacement of the heating and ventilation system, including the ductwork and flues, as well as the radiant heat panels in the ceiling. Owner maintenance shall include such items as changing filters and vacuuming ducts. Owners must obtain Association approval prior to performing any work on the radiant heat ceiling panels.
- (7) Dryer Vents. The Association may periodically clean the clothes dryer vents. In the event an Owner has modified the dryer vent or attic space, and such modification prevents cleaning of the vents within the scheduled time frame, the Association may undertake to gain access to the vents and provide the necessary cleaning. Any additional costs incurred by the Association to gain access and perform the cleaning shall be charged to the Owner as a Reimbursement Assessment.
- (8) Owner Improvements. Owners shall be responsible for all aspects of maintenance, repair and replacement of improvements and/or architectural alterations made by or on behalf of Owner or any predecessor.
- (9) Other Components. Unless otherwise determined by the Board, all other Exclusive Use Common Areas shall be maintained by the Owner benefited, and repaired and replaced by the Association to the extent that such work is appropriate due to normal usage. These

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components shall include main entry doorsteps, main entry stoops, front porches, doorframes, window frames, doorbells, address numbers, and exterior light fixtures immediately adjacent to and serving the particular Unit.

- d) Landscaping. All landscaping on the Project shall be maintained and cared for so as to present itself as neat and orderly.
- (1) Common Area. The Association shall be responsible for all landscaping located on the Common Area, excluding Exclusive Use Common Area.
 - (2) Exclusive Use Common Area. Each Owner shall be responsible for all vegetation within his or her balcony, deck, patio and/or yard. Each Owner shall contain such vegetation within the confines of the yard, balcony or deck area and shall be responsible for any damage, including that caused by roots and abrasion, to areas which the Association maintains, repairs and/or replaces. The Association may regulate landscaping that exceeds fence or railing height or that has roots or branches that protrude beyond the Owner's Exclusive Use Common Area. No planters or any other items may be placed atop fences, balcony railings or deck railings. The Association may prohibit or impose conditions upon plantings of particularly invasive vegetation, such as bamboo and ivy.
- e) Insect Infestation and Wood Destroying Pests & Organisms.
- (1) The Owner is responsible to take reasonable measures to keep Exclusive Use Common Area free of wood-destroying organisms and pests and the damage they cause. This includes such problems as termites and decay (also known as dryrot). Reasonable measures shall include use of proper racks for storage of firewood at least twelve (12) inches from wooded side walls, spacers under all pots, planters and other objects which would tend to trap moisture on decks or balconies, and prompt removal of leaves, dirt and other debris. Use of outdoor carpet over decks, balconies and patios is prohibited. Reasonable measures shall also include prompt notification of the Association of any conditions which promote and/or the presence of pests, organisms or damage which the Association should investigate and/or act on. This includes identifying misdirected or broken irrigation sprinklers which may spray on walls or other structures.
 - (2) At the discretion of the Board, the Association may assume responsibility to coordinate and cause repair and maintenance where such work must be performed at more than one Unit. If the Association exercises the right to such control, it may include reasonable notice of the need to temporarily vacate the residence and/or as otherwise provided in Civil Code section 1364.
 - (3) The Association may cause the temporary, summary removal of any occupant of a residence for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.
 - (4) The costs of temporary relocation during the repair and maintenance shall be borne by the Owner or other resident of the Unit affected.

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(5) In the event the Association advances costs for which an Owner is responsible or costs of enforcement of this section, it may seek reimbursement in the same manner as collection of delinquent Assessments.

- f) Hazardous Materials. If the Association learns of the presence of any material or substance in the Common Area, Unit, or Exclusive Use Common Area which is deemed by any governmental agency to be potentially hazardous, the Board may, at its discretion, make written findings as to the circumstances and the need to take certain action and establish and implement appropriate policy and actions as are in the best interests of the Association. This shall include the power to take corrective measures similar to those set forth in subsection (e) above.
- g) Protection from Freeze Damage. Owners shall take reasonable precautions to protect water pipes (including hose bibs) in Exclusive Use Common Area from freeze damage.
- h) Earthquake Damage. The Association shall have no liability for uninsured or underinsured damage to Unit areas or personal property caused by an earthquake or other seismic related event.

5.2 Slabs. The buildings at Pelican Cove are large slabs on grade. To a limited extent, these slabs tend to conform to the soil beneath, a process which generally slows over time. The Association shall not be responsible for cosmetic cracks (such as in wallboard) or other aspects of this process.

5.3 Enforcement.

- a) Common Area. If the need for any maintenance, repair or replacement of any Common Area is caused through the willful or negligent act of an Owner or the Owner's family, guests, tenants, invitees, lessees, or pets, then the Association may cause the work to be performed and upon determination of responsibility may levy a Reimbursement Assessment against the Owner and/or the Owner's Condominium. If damage to the Common Area emanates from adjacent Unit area, the Owner of the Unit is responsible for the cost to repair and restore the Common Area, regardless of when the damage occurred. Any such cost may be the subject of a Reimbursement Assessment.
- b) Unit and Exclusive Use Common Area. If the Board reasonably finds a Unit or Exclusive Use Common Area requires maintenance, repair or replacement of any component or condition for which the Owner or the Owner's family, guests, tenants, invitees, lessees, or pets are responsible, the Board may direct the Owner to perform the work and if the Owner fails or refuses to do so within a reasonable period of time, the Association may utilize the provisions of Article XII entitled *Enforcement of Governing Documents*, and cause the work to be performed and levy a Reimbursement Assessment. The Association may also utilize the provisions of Article XI, Section 11.6(c) entitled *Association Options for Continuing Nuisance*.
- c) Entry for Repairs. The Board or its contractors or agents may enter any Unit or Exclusive Use Common Area when necessary in connection with any maintenance, repair, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the residents as is practical, and any damage caused thereby shall be repaired

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by the Association. Whenever possible, at least twenty-four (24) hours notice will be given to the resident. If the Owner or resident is responsible for creating emergency circumstances, and access is not provided by a resident, the Owner shall reimburse the Association for locksmith fees or other costs to access and/or secure the premises. Owner(s) shall be responsible for all Association costs incurred due to failure to cooperate and/or provide reasonable access to Owner's Unit.

- d) Continuing Nuisance. Failure of an Owner to perform any maintenance, repair or replacement determined by the Board to be the Owner's responsibility and necessary shall be deemed a continuing nuisance.
- c) Other Options. These enforcement options shall be in addition to those provided for in Article XII.

ARTICLE VI
USE RESTRICTIONS

The Project shall be occupied and used as follows:

6.1 Use of Units.

- a) No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests.
- b) No tent, shack, trailer, recreational vehicle, outbuilding or structure of temporary character shall be used at any time as a residence, either temporarily or permanently.
- c) No Owner shall permit anything to be done or kept in his or her Unit which will result in the increase of premiums, decrease in coverage or cancellation of insurance on any Unit or Common Area, or which would be in violation of any law.
- d) Nothing shall be done in any Unit which will impair the structural integrity of any building in the Project or which would structurally alter any such building. Requests for architectural changes are addressed in Article XI.
- e) No Person shall cause or permit any objects or articles of any kind, except for outdoor patio or lounge furniture, planters and barbecue equipment, to be placed on the balcony, patio or fence without obtaining the prior consent of the Association. The consent may take the form of pre-approved guidelines. Such guidelines may include specifics as to size, placement and number of plants and other personal property. No outdoor carpeting or artificial grass shall be placed on any balcony, deck or patio.
- f) Each Person shall comply with all of the requirements of all governmental authorities, federal, state and local, and all laws, ordinances, rule and regulations applicable to his or her Unit.

6.2 Use of Common Area. All use of the Common Area is subject to Association rules and restrictions. Use of the Common Area is further subject to the following:

- a) Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the

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Common Area which will result in the decrease in coverage or cancellation of insurance on any Unit or Common Area, or which would be in violation of any law.

- b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board, in accordance with guidelines adopted by the Board or in designated storage areas. Except for reasonable amounts kept for normal household use, no gasoline, kerosene, cleaning solvents or other flammable liquids shall be stored in the Common Area or in any Unit.
- c) Nothing shall be done to or in the Common Area which has an adverse effect on its enjoyment, use, value, condition or appearance. Owners shall be liable for their own acts, as well as jointly for those of family members, tenants, guests and invitees. Any damage or destruction to the Common Area may be cause for a Reimbursement Assessment against the tenant, lessee, Owner and his or her Condominium.
- d) Nothing shall be altered or constructed or removed from the Common Area, except upon the written consent of the Board.
- e) There shall be no violation of the rules in the use of the Common Area.
- f) The Association may require deposits and/or user fees for the private use of the Common Area, such as Association recreational facilities.

6.3 Nuisance. No noxious, illegal or seriously offensive activity shall be carried on in any Condominium or in any part of the Project, nor shall anything be done therein which may be or become an annoyance or nuisance to or which may in any way interfere with the quiet enjoyment of each of the other residents.

6.4 Vehicle Restrictions.

- a) Rules. In order to promote traffic safety and enhance the appearance of Pelican Cove, Owners shall park, store or keep vehicles in accordance with Association rules.
- b) Vehicle Type Restrictions. In guest or other Common Area parking, no Person shall park, store or keep any large commercial type vehicle (dump truck, flatbed, oil or gas truck, etc.), any recreational vehicle (camper unit, motor home, trailer, boat trailer, mobile home or other similar vehicle), boats or any vehicle other than a private passenger vehicle. The above excludes camper trucks and sport utility vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation (and not used for commercial purposes).
- c) Other Limitations.
 - (1) Parking is permitted in designated areas only.
 - (2) Parking spaces shall not be used for vehicle storage. The Association has the authority to tag and/or have vehicles parked continuously for a period of seven (7) days or longer towed at the owner's expense. Residents should notify the management company if extended absence is anticipated.
 - (3) Due to the limited number of Common Area parking spaces, a maximum of two (2) non-guest vehicles shall be permitted per Unit and parked on the Project, unless prior approval of the Association is

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obtained. Each resident must first utilize his or her carport for parking so as to avoid frequent or continual parking of that resident's vehicles in Common Area parking spaces.

- (4) Carports may only be used for parking of vehicles.
 - (5) There shall be no repairs or restorations of any motor vehicle, boat, trailer or other vehicle upon any portion of the Project. Emergency repairs may be performed, but only to the extent necessary to enable movement to a proper repair facility.
 - (6) No vehicle which emits extraordinary levels of exhaust pollution or noise, as determined by the Board, shall be operated within the Project.
 - (7) Vehicles must display a current registration and be operable.
 - (8) Vehicles displaying "For Sale" signs may not be parked on the Project.
- d) Towing. The Association may cause any vehicle parked on Common Area in violation of the Governing Documents to be towed (California Vehicle Code section 22658.2).
- 6.5 Signs. No signs shall be displayed to the public view on or from any Unit or any portion of the Common Area, except such signs as are approved by the Board. One (only) "For Sale" or "for Rent" sign per Unit shall be allowed, provided it does not exceed three (3) square feet in size. Signs required by legal proceedings are also excepted.
- 6.6 Animals. No animals, reptiles, insects, or birds of any kind shall be raised, bred, or kept in any Condominium or on any portion of the Project; except that no more than one (1) usual and ordinary household pet such as a dog, cat, bird, etc., may be kept, provided it is not kept, bred or maintained for any commercial purposes, and it is kept under reasonable control at all times. No pet shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a Person capable of controlling it. After making a reasonable attempt to notify the owner, any Owner may cause any unleashed dog found within the Common Area to be removed to a pound or animal shelter by calling the appropriate authorities. Owners shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any mess left by their pets.
- 6.7 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles or storage piles shall be kept screened and concealed from view of other Units, streets and Common Areas. The Association shall furnish central garbage pickup service. All Owners shall be responsible for putting their refuse in the centrally located dumpsters.
- 6.8 Antennae, Satellite Dishes, External Cables or Fixtures, etc. Radio and television antennae, television or telephone cable or other exterior wiring, satellite dishes or other exterior fixtures may not be erected or kept in place on Common Area, without the prior written consent of the Association. The Association may adopt a policy and/or guidelines on the subject.

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- 6.9 Window Treatment. All drapery, curtains, window coverings, shutters, or blinds visible from the street or Common Areas shall be white or neutral in color or lined in white.
- 6.10 Clothes Lines. There shall be no outside laundering or drying of clothes, except inside fenced patios and then only if the clothes cannot be seen from the street, Common Area or other Units.
- 6.11 Power Equipment. No power equipment or hobby shops shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.
- 6.12 Sports Apparatus. No sports apparatus, such as basketball standards, shall be permitted on the Project which is visible from other Units or from the Common Area.
- 6.13 Attics. Common Area attic space adjacent to second floor Units with lofts shall not be encroached upon, altered in any way or used by any adjacent Owner or resident without the prior written approval of the Association. Once use of the attic space has been approved by the Association and recorded, this right cannot be taken away without a hearing as set forth in Article XII, Section 12.3.
- 6.14 Restriction on Businesses. No trade or business shall be conducted within the Project, except for such professional and administrative work as may be permitted by City Ordinance, provided there is no external evidence thereof and it is conducted in accordance with guidelines adopted by the Board. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle or foot traffic within the Project or to the Unit, (c) cause any damage to the Common Area, (d) adversely affect or increase the cost of Association insurance or (e) increase, by any significant amount, electrical or water consumption.
- 6.15 Illegal Acts. Any illegal act shall also constitute a breach of the Governing Documents and may, at the option of the Association, be enforced as such.

ARTICLE VII
SALE OR LEASE OF UNITS

- 7.1 Rental or Lease of Units. A general objective of the Governing Documents is to protect, enhance and maintain the single-family residential atmosphere which exists within the Project and to avoid occupancy of residences for short periods of time or by an unreasonable number of individuals. Accordingly, an Owner shall be entitled to rent or lease his or her Condominium if:
 - a) There is a written rental or lease agreement specifying that (1) the tenant shall be subject to all provisions of the Governing Documents, (2) a failure to comply with any provision of the Governing Documents shall constitute a breach of the agreement, and (3) all tenants are subject to disciplinary action or other actions by the Association to enforce the Governing Documents;
 - b) The term of the rental or lease is not less than thirty (30) days;

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- c) The Owner leases not less than the entire Unit;
- d) The Owner provides any tenant or lessee with current copies of all the Governing Documents. The Owner shall also provide copies of any subsequent changes or additions. The Association may require evidence that the tenant or lessee has received copies of all Governing Documents. If such evidence is requested and is not timely provided, the Association may unilaterally provide such copies and charge the Owner;
- e) The Owner and the tenant or lessee shall be jointly and severally liable at all times for compliance by the tenant or lessee with the Governing Documents during the tenant's or lessee's occupancy and use of the Condominium;
- f) The Owner shall forego the use of the recreational facilities during the time that the Owner's Condominium is occupied by a tenant or lessee;
- g) The Owner shall be responsible for any damage caused by the tenant, lessee or guest to Association property;
- h) The Owner shall notify the Association of the name and day and evening telephone numbers for each tenant or lessee within ten (10) days of the change in occupancy.

7.2 Sale of Units - Obligations of Owners. Owners shall be subject to the following:

- a) Owner's Duty to Notify Association of Contract Purchasers. Each Owner shall notify the Association of the names of any contract purchaser of the Owner's Condominium.
- b) Contract Purchasers. A contract seller of a Condominium must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area to any contract purchaser in possession of the property. However, the contract seller shall remain jointly and severally liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.
- c) Notification Regarding Governing Documents.
 - (1) As more particularly provided in Civil Code section 1368, as soon as practical before transfer of title or the execution of a real property sales contract with respect to any Unit, the Owner/seller must give the prospective purchaser:
 - (i) a current copy of the Governing Documents;
 - (ii) a copy of the then current rules and/or policies;
 - (iii) a copy of the most recent documents distributed pursuant to Civil Code section 1365 (which includes the Pro Forma Operating Budget (or Summary) distributed to Members, including estimated revenue and expenses on accrual basis, summary of reserves, anticipation of special Assessment(s) and statement of calculation and establishment of reserves; Statement of Collection Practices and Policies; and Summary of Property, General Liability, Earthquake and Flood Insurance Policies); and
 - (iv) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees,

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interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Unit being sold.

- (2) Within ten (10) days of the mailing or delivery of a written request, the Association shall provide the Owner selling the property with a copy of the current Governing Documents, together with the delinquency statement. The Association shall be entitled to a reasonable fee for providing such documents.

7.3 Termination and Commencement of Obligations. Even if an annual Assessment has been levied or a special Assessment is payable in installments, when ownership changes occur:

- a) the transferor-Owner shall be personally liable for the pro rata share of all annual and other Assessments which became payable up to the time of transfer, and
- b) the receiving-Owner shall be responsible personally for the pro rata share reflecting payments actually payable after acquisition of the ownership interest.

In the event payment of an annual or other Assessment has been accelerated under CC&R Article III, Section 3.3(c), upon change in title, the personal liability of both parties shall nonetheless be prorated. Therefore, neither shall be personally liable for amounts due and payable during a time when no ownership interest is held.

7.4 Notice of Acquisition. A purchaser or other Person acquiring an ownership interest to a Condominium shall notify the Association not more than ten (10) days after the date of acquisition and provide (a) the name(s) of all Persons with an ownership interest as listed on the recorded title transfer documents, (b) a mailing address for the Owner(s), (c) day and evening telephone numbers, and (d) the effective date of acquisition of each ownership interest.

7.5 Acceptance of Condominium Conditions. When acquiring a Condominium, the new Owner(s) accept responsibility for conditions created by the predecessor, which may include failure to perform proper maintenance, repair and replacement of components in and around the Condominium. Certain Units may have improperly converted attic space and/or re-routed dryer ducts which must be brought into compliance with the provisions of the applicable Building Code. It is therefore important that prospective purchasers examine the condition of Exclusive Use Common Area and Condominium Common Area in and around the Unit.

**ARTICLE VIII
INSURANCE**

8.1 Types of Insurance The Association shall procure and maintain the following types of insurance:

- a) **Fire and Hazard Insurance.** Fire and hazard insurance with extended coverage for the full replacement value of all improvements in the Project including the Unit areas. The Association shall also insure any property,

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whether real or personal, owned by the Association, against loss or damage, with the Association as owner and beneficiary for such insurance.

- b) **Additional Endorsements.** To the extent not included in the basic policy coverage, the Association may procure the following additional coverage: demolition, foundations, building code mandated upgrades, retaining walls, fences and appurtenant structures.
 - c) **Liability Insurance.** Liability insurance to protect against any liability to the public or to any Owner incident to the ownership and use of the Common Area. The limits of such insurance shall be not less than Three Million Dollars (\$3,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. The liability insurance shall identify as separately protected insureds the Association, the Members, and the Board from liability in connection with the maintenance and use of the Common Area.
 - d) **Director and Officer Insurance.** Insurance covering Directors, Officers, committee members and volunteers acting under the direction of the Board from errors and omissions.
 - e) **Fidelity Bond.** A fidelity bond covering officers, directors and employees in an amount to be determined by the Board.
 - f) **Other Insurance.** Worker's Compensation insurance shall at all times be carried to the extent necessary to comply with applicable laws, and any other insurance deemed necessary to comply with applicable laws and/or deemed necessary by the Board.
- 8.2 **Provisions and Limitations.** It is acknowledged that terms of insurance coverage do not always coincide with defined areas of Owner and Association ownership, or responsibilities to maintain, repair or replace. Notice is hereby given to any insurer issuing policies in accordance with CC&R requirements that the Association's fire and hazard insurance shall be construed to provide the maximum coverage possible for all improvements (whether Unit, Common Area or Exclusive Use Common Area) wherever located. Should there be a conflict or inconsistency between the coverage provided in the policy and that required by the CC&Rs, the more comprehensive of the two shall be applied.
- 8.3 **Coverage Not Available.** If any insurance policy or endorsement required by Section 8.1 is not available, or is economically unfeasible, then the Association shall obtain alternate insurance which provides, as nearly as possible, such coverage.
- 8.4 **Additional Insurance by Owner.** The Association is not obligated to procure liability insurance for any individual Owner or resident. Every Owner and resident is encouraged to insure his or her Unit area and personal property against loss. Additionally, every Owner and resident is encouraged to carry Comprehensive Personal Liability Insurance. Insurance procured by the Association does not cover many perils and liabilities individual Owners and residents may incur. Owners are further encouraged to consult with their insurance professionals to maintain loss assessment coverage generally and loss assessment coverage for earthquake damage. All insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to the Association.

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- 8.5 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article, Section 8.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.
- 8.6 Earthquake Insurance.
- a) The Association may, but shall not be required to, obtain earthquake insurance. The Association, Directors and/or manager shall not incur any liability for the failure to obtain or maintain earthquake insurance or an earthquake reserve account. The Board may periodically submit to the Owners the question of whether or not to obtain earthquake insurance. That may be submitted in the form of a vote to increase Assessments to cover such cost.
 - b) After consultation with the Association's certified public accountant and/or counsel, at its discretion and/or in conjunction with a vote of the Members, the Board may establish and maintain an earthquake reserve fund which shall be accounted for in the same manner as other reserve accounts. Such fund may be in conjunction with or in lieu of earthquake insurance. The fund may also be used for upgrading structural components.
 - c) The cost of the deductible(s) and/or under insurance for an earthquake loss shall be borne equally by all Owners and/or paid from any earthquake reserve fund.
- 8.7 Association Insurance Deductible. The Association shall pay the deductible on fire or other losses unless it can be shown that the point of origin of the cause or damage was in the Unit area, in which case the Owner shall be responsible to pay the deductible. In either event, if the damage is caused by negligence, the responsible party shall pay the deductible. Responsibility for earthquake deductibles is addressed in Section 8.6(c) above.

ARTICLE IX
DAMAGE AND DESTRUCTION

- 9.1 Restoration Defined. As used in this Article, the term "restore" shall mean repairing, rebuilding or reconstruction of damage to substantially the same condition and appearance as prior to fire or other casualty damage.
- 9.2 Insured Casualty. If any improvement is damaged or destroyed from a risk covered by the insurance maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the improvement to the same general condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or a trustee.
- 9.3 Restoration Proceeds. The costs of restoration of the damaged improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged

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improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged improvement. If the total funds then available are sufficient to restore the damaged improvement, the improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged improvement, the improvement shall be restored. The Board may also procure funding for reconstruction from any commercial lender or governmental entity.

If the total funds available to the Association are still insufficient to restore the damaged improvement, then the Board shall first attempt to impose an additional special Assessment pursuant to Section 9.4 below; and second to use a plan of alternative reconstruction pursuant to Section 9.5 below. If the Members do not approve such actions, then the entire building of which the damaged improvement is a part shall be sold pursuant to Section 9.7 below.

- 9.4 Additional Special Assessment. If the total funds available to restore the damaged improvement as provided in Section 9.3 are insufficient, then a meeting of the Members shall be called for the purpose of approving a special Assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to Section 9.3 above, are insufficient to restore the damaged improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Section 9.5.
- 9.5 Alternative Reconstruction. The Board shall consider plans to reconstruct the damaged improvement, making use of whatever funds are available to it pursuant to Section 9.3 and Section 9.4 above. The Board shall present any proposed plan for Alternative Reconstruction to the Owners for approval. A plan for Alternative Reconstruction shall only be approved by an affirmative vote of two-thirds of the voting power of the Owners whose residences were materially damaged, as determined by the Board ("Affected Owners"), and a majority of the voting power of all Owners. If no plan for Alternative Reconstruction is agreed to within nine (9) months of the onset of the damage, then the provisions of Section 9.7 shall apply.
- 9.6 Rebuilding Contract. If any improvement is damaged or destroyed, the Board shall retain one or more licensed design professionals for the purpose of assessing the scope of the necessary restoration, preparation of plans and specifications, solicitation of bids, and coordination of any repair and reconstruction of the Project. If there is a determination to restore the building to the same general condition or reconstruct using an alternative reconstruction plan, the Board shall have the authority to enter into a written contract with a contractor for such repair and reconstruction after obtaining bids from at least two licensed and reputable contractors. The Board shall take all steps necessary to assure the commencement and completion of repair and reconstruction at the earliest possible date.
- 9.7 Sale of Building. If the damaged improvement is part of a Condominium building ("Damaged Building"), the damage renders one or more of the Units uninhabitable, and the improvements will not be restored in accordance with the

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provisions of Sections 9.3, 9.4, and 9.5, the Board, as the attorney-in-fact for each Owner of a Unit in the Damaged Building, shall be empowered to sell the Damaged Building, including all residences therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building and restore any remaining improvements as may be necessary, (iii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area, or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to Association architectural approval. In lieu of selling the Damaged Building to a third person, the Association may purchase the Condominium building on satisfaction of the following conditions:

- a) Members holding 67% of the total voting power (including a majority of the votes allocated to the Units within the Damaged Building) approve of the purchase;
- b) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;
- c) any special Assessment needed to fund the purchase price shall be levied against all Units, including the Units within the Damaged Building;
- d) the Association has an adequate source of funds to repair, renovate or rebuild all of a portion of the Damaged Building and/or to remove and appropriately landscape the remaining area. For this purpose, no Condominium that is being purchased shall be subject to any Assessment intended to be used as a source of such funds.

The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Units in the Damaged Building and their respective Mortgagees, in proportion to their ownership interest in the Common Area.

If a Damaged Building is removed and not restored so that the new building contains the same number of Units as the removed building, the Board shall take appropriate steps to adjust the property interests of the remaining Unit Owners to effect such amendments as may be necessary to the Declaration, the Condominium Plan and the Map to reflect the revised property interests and other related changes.

- 9.8 **Condemnation.** In the event of an award for the taking of any Unit in the Project by eminent domain, the Owner of such Unit shall be entitled to receive the award for such taking and after acceptance said Owner and his or her Mortgagee shall be divested of all interest in the Project if such Owner shall vacate the Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the

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Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Units are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Units and their respective Mortgagees according to the relative values of the Units affected by the condemnation, said values to be determined by the methods provided in Section 9.7. If any Condominium or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the Mortgagee, with respect to any such Condominium, will be entitled to timely written notice of such proceeding or proposed acquisition and no provision of any document establishing the Project will entitle the Owner of a Condominium or other party to priority over such Mortgagee with respect to the distribution to such Condominium Owner of the proceeds of any award or settlement.

ARTICLE X

MORTGAGE PROTECTION

- 10.1 **Rights of Mortgagees.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Governing Documents to the contrary, Mortgagees shall have the following rights:
- a) **Notice of Default.** All Mortgagees that have filed with the Association a request for notice of default, shall be entitled to receive written notice from the Association of any default by the trustor of any deed of trust on a Unit (the beneficial interest in which is held by said Mortgagee) in the performance of such trustor's obligations under the Governing Documents, which is not cured within thirty (30) days.
 - b) **Notices.** The Association shall discharge its obligation to notify Mortgagee by sending written notices required herein to the lender or lenders requesting notice, at the address given on the current request for notice, in the manner prescribed by Article XIII, Section 13.7.
 - c) **Right of First Refusal.** The Governing Documents contain no provisions creating a "right of first refusal," but should any such rights be created in the future, any such rights shall not impair the rights of any Mortgagee to: (1) foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage, or (2) accept a deed (or assignment) in lieu of foreclosure or in the event of default by a mortgagor, or (3) sell or lease a Unit acquired by the Mortgagee.
 - d) **Limitations.** Except as provided by statute, unless the holders of at least three-fourths (3/4) of the first Mortgagees (based upon one vote for each first Mortgage owned), have given their prior written approval, the Association shall not be entitled to:

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- (1) by act or omission, seek to abandon or terminate the Project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);
 - (2) change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the Common Area;
 - (3) partition or subdivide any Unit;
 - (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause);
 - (5) use hazard insurance proceeds for losses to any Condominium property (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such Condominium property, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Project;
 - (6) make any material amendment to the Declaration or to the Bylaws on the following subjects: (a) the percentage interest of the Owners in the common elements of the Project; (b) the fundamental purpose for which the Project was created (such as change from residential use to a different use); (c) voting; (d) Assessments, Assessment liens and subordination thereof; (e) the reserve for repair and replacement of common elements; (f) Project maintenance obligations; (g) casualty and liability insurance; (h) reconstruction in the event of damage or destruction; (i) rights to use the Common Area; (j) annexation; (k) any provision which by its terms is specifically for the benefit of first Mortgagees or specifically confers rights on first Mortgagees;
 - (7) effectuate any decision by the Association to terminate professional management and assume self-management.
- e) Inspection of Records. Any Mortgagee will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, and (b) receive the annual financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association, and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.
- f) Reserve Fund. Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Area improvements that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.
- g) Priority. No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of first Mortgagees of Units pursuant to their Mortgages in the case of a distribution to Owners of insurance

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proceeds or condemnation awards for losses to or taking of Units and/or Common Area.

h) Assessment Obligations. Each holder of a first Mortgage lien on a Unit who comes into possession of the Unit by virtue of foreclosure of the Mortgage, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid Assessments and charges against the Unit which accrue prior to or the time such holder comes into possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to or all Units including the mortgaged Unit, and except for Assessment liens recorded prior to or the Mortgage.

(1) Partition Provisions. Judicial partition or subdivision of any Unit is subject to rights of Mortgagees as provided in Article II, Section 2.2.

10.2 Mortgagee Response. In the event that a holder of a Mortgage or Deed of Trust has a right to participate in or vote on any change in this Declaration, implied approval of any Board recommended change shall be assumed if or when an eligible party fails to or return such vote within thirty (30) days after the Association sends notice of the proposal by certified or registered mail and by first-class mail to the address identified in the chain of title. No related fee or charge shall become an obligation of the Association.

ARTICLE XI **ARCHITECTURAL CONTROL**

11.1 Architectural Approval. No fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Unit any color desired. No landscaping of patios or yards visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall be have been submitted to and approved in writing by the Board or by the Architectural Control Committee. No alterations shall be made which impair the integrity of structural, fire or acoustical components of the building. The Owner must comply with all laws and ordinances regarding alterations and remodeling. If a building permit is required by the City for any interior work, the Owner is required to provide a copy to the Association. No alteration of the Unit may be made which will result in an increase in sound transmission into any other Unit. Unless prior approval of the Association is obtained, no alteration of the Unit may be made which will be visible from the outside of the Unit. Further, there shall be no significant and/or

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structural modifications of the Common Area (including Exclusive Use Common Area) or the individual Units without the prior written approval of the Association. In addition, a copy of professionally drawn plans may be required to be submitted to the Association before approval of changes is given. The Board may exercise control directly or utilize an Architectural Committee to accomplish this regulation.

- 11.2 Architectural Committee. The Architectural Control Committee, if any, shall consist of three (3) Members appointed by the Board. A majority of the Architectural Control Committee may designate a representative to act for it. If no committee is appointed, the Board shall assume this function. If a decision on an application has been rendered by the Architectural Committee, there shall be a right of appeal to the Board. The determination of the Board shall be final. Members of the Architectural Committee shall not receive any compensation for services rendered. All Architectural Committee members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Committee functions.
- 11.3 Architectural Guidelines. Subject to Board review and approval, the Architectural Committee may unanimously vote to adopt guidelines to be used to address architectural alterations.
- 11.4 Non-Waiver. Approval of any application or alteration shall not be deemed a waiver of any right to deny approval of any similar application or alteration.
- 11.5 Liability. Neither the Board nor the Architectural Committee shall be liable to the Association or 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, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- 11.6 Architectural Enforcement.
- a) Notice and Opportunity for Hearing. If the Association has determined that an Owner is not in compliance with the architectural guidelines, then the Association shall send notice of such noncompliance to the Owner. The notice of noncompliance shall include a specific description of the architectural violation, as well as a proposed remedy and/or course of action. The Owner may comply, or request a hearing. Any hearing shall be upon such reasonable terms as the Association may impose. For purposes of this section, noncompliance includes, but is not limited to, failure to obtain Association approval, failure to follow the approved plan, failure to comply with architectural guidelines, and/or failure to properly maintain improvements.
 - b) Determination. At the hearing or when the matter is otherwise addressed by the Association, if the Association finds that there is no valid reason for the continuing noncompliance, the violation shall be deemed a continuing nuisance. The Association may require the Owner to remedy or remove the same.
 - c) Association Options for Continuing Nuisance. If the Owner does not comply with the Association's ruling within any period specified or within any extension of such period as the Association, in its discretion, may grant, the Association may (1) remove the noncomplying improvement, (2) remedy the

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noncompliance, or (3) record (if accepted by the County Recorder) a Notice of Non-Compliance against the property, which shall also be conclusive as to the Owners and any successors in interest. A Notice of Non-Compliance in this context is a document recorded in the chain of title. It gives notice of the nuisance to all who may acquire an interest in the property and further notices that the Association has reserved the right to take future action against the property and/or Owner to abate the nuisance. The Association shall provide the Owner with a copy of any such recorded Notice of Non-Compliance. The costs of any such action(s) shall be assessed against the Owner as a Reimbursement Assessment. These powers of enforcement shall be in addition to the general enforcement provisions of this Declaration.

- 11.7 Notice of Record. The Association shall have the right to record with title to a Condominium an Architectural Notice to convey to any prospective or future Owner, the status of (i) an architectural variance, or (ii) an architectural agreement which may alter Owner and Association responsibilities from those otherwise provided in this Declaration. The Association shall provide the Owner with a copy of any such recorded Notice.

ARTICLE XII

ENFORCEMENT OF GOVERNING DOCUMENTS

- 12.1 Violation. A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. Any activity or condition which constitutes a public or private nuisance shall also be deemed a violation. If the detrimental effect of a violation continues for additional days, discipline imposed by the Association may include one component for the violation and, according to the Association's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to mitigate, repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible party.
- 12.2 Enforcement Options. In the event of a breach or violation of any of the Governing Documents by any Person, the Board, for and on behalf of all other Members, may enforce compliance with the Governing Documents through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including, but not limited to, the following:
- a) Suspension of Rights. The Board may suspend voting rights or the right to use Common Area facilities.
 - b) Fines. The Association may implement schedules of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as illegally parked vehicles). If such a fine policy and schedule is adopted by the Association, the Association shall distribute it to each Member, by personal delivery or first-class mail. The Board may levy a reasonable fine in accordance with the Association's fine policy and schedule. In imposing any fine, the Association, at its sole discretion, may choose to suspend some or all of the

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fine for a period of time pending compliance with a direction of the Association.

- c) **Alternative Dispute Resolution (ADR).** In the event of a dispute between Owners (or residents), the parties shall comply with the mandatory ADR provisions of Civil Code section 1354 or such other form of ADR as may be agreed upon.
- d) **Legal Action.** Recognizing the importance of preserving status quo in the Pelican Cove neighborhood is an important goal of this Declaration. This includes the preservation of aesthetics and the quiet enjoyment of each residence. With the exception of nonpayment of any Assessment, the recovery of dollar damages for any violation of the Governing Documents is an insufficient remedy. Enforcement of the Governing Documents against any Owner or resident may be undertaken by appropriate legal proceedings instituted by any Owner, the Association, or both. Legal proceedings may include the following:
 - (1) an action for mandatory injunction (a court order or judgment which requires someone to do something);
 - (2) an action for prohibitory injunction (in which the court prohibits specified behavior);
 - (3) an action for declaratory relief (such as interpretation of any provision of the Governing Documents); and/or
 - (4) A claim for damages, including prospective costs and costs actually incurred in obtaining compliance.

No action shall be filed unless or until there is compliance with the Alternative Dispute Resolution provisions required by Civil Code section 1354.

- e) **Self Help.** The Association shall have the right to enter any Unit to gain compliance with the Governing Documents, including but not limited to the following:
 - (1) **Maintenance, Repair and Replacement.** If the Association reasonably finds a Unit requires maintenance, repair or replacement of any component or condition for which the Owner is responsible, the Board may direct the Owner to perform the work and if the Owner fails or refuses to do so, the Association may, after notice to the Owner, utilize these provisions, and cause the work to be performed. The Association may collect the cost by adding it to the Assessment for that Unit and collecting it in the same manner as a Reimbursement Assessment.
 - (2) **Removal of Nuisance.** The Association shall have authority to enter a Unit to cause the removal of a nuisance from the Project. This power does not relieve the Association of its duty to comply with the due process and notice requirements of the Governing Documents.
- f) **Imposition of Reimbursement Assessment.** The Association may levy a Reimbursement Assessment as provided for in Article III, Section 3.1(c) hereof.
- g) **Referral to Governmental Agency.** The Association, in its sole discretion, may refer any enforcement action to the appropriate governmental agency

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with jurisdiction, such as the police department, fire department, health department or other proper agency.

- h) Recording with Title. If acceptable to the County Recorder, the Association may cause to be recorded with title to the offending Condominium, a Notice of Non-Compliance or Notice of Failure to comply with the Governing Documents. Such document shall constitute notice of a continuing nuisance and/or that the property is security for payment of damages and/or Reimbursement Assessments and shall be binding on all ownership interests of the Condominium and their successors in interest. A copy of any such notice shall be provided to the Owner identified in the Association's records.
- i) Notices to Mortgagees. If any Owner is in default under any provisions of the Governing Documents, the Association may notify the Owner's Mortgagee of record of such default.

12.3 Implementation. There are three different procedures that the Association may use to assure that actions to enforce the Governing Documents are done in a fair and reasonable manner. Each provides the party charged with a violation with an opportunity to be heard.

- a) The Association Sets a Hearing Date. The Association gives notice that a hearing will be conducted fifteen (15) or more days after the notice is conveyed.
- b) The Party Requests a Hearing Date. The Association gives notice of the violation and the sanction that will be automatically imposed (fifteen (15) or more days after the notice is conveyed) - unless a hearing is requested by the party. Such a request for hearing must be made within ten (10) days of the notice; this limitation should also be set forth in the notice itself. If a hearing is timely requested, imposition of any sanction should be suspended and the hearing set for not less than fifteen (15) days from the date of request.
- c) Pressing Circumstances. Some circumstances may justify immediate action, such as:
 - (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring residents;
 - (2) a traffic or fire hazard;
 - (3) a threat of material damage to, or destruction of Project; or
 - (4) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as parking violations).

Under these circumstances, the Association or its authorized agent may take immediate corrective or disciplinary action. If the party desires an appeal of the action, such request must be made in writing not later than five (5) days after actual or constructive notice of the action. If such a request is received by the Association and enforcement activity may reasonably be delayed, the Association shall then schedule a hearing to be conducted five (5) or more days after the request is received and at least five (5) days before continued Association enforcement activity, if any, is to be taken.

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d) Due Process Generally.

- (1) Findings of Fact and Determination. During the hearing, after the hearing or when the matter is otherwise addressed by the Association, any action by the Association shall be supported by written findings of fact. If any sanction is imposed by a hearing body other than the Board, the findings of fact shall also include notice of right to appeal to the Board.
- (2) Right to Appeal. The Board may adopt procedures for appeals which generally comport with the provisions of Section 12.3. The determination of the Board shall be final.

- e) Owner Standing. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of Civil Code section 1354 or otherwise by law.

12.4 Notices.

- a) Content. Notices and requests must be in writing. Notices from the Association shall include at a minimum, the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation and a reference to the relevant Governing Document provision or other authority.
- b) Conveying. Notices and requests may be given by any method reasonably calculated to give actual notice. If the notice or request is given by mail, it shall be sent by first-class and/or certified mail. If the Association uses the mail, it may send such notice to the last address of the Person shown in the records of the Association.

12.5 Miscellaneous.

- a) Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative. The exercise of any right(s) or remedy(ies) shall not affect the exercise, at the same or at different times, of any other rights or remedies for the same or any different default or breach or for the same or any different failure of any Member or others to perform or observe any provision of this Declaration.
- b) Non-Waiver. The failure of any Member, the Board, any Committee, or the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.
- c) Rules re: Disciplinary Proceedings. The Association shall be entitled to adopt rules and/or policies that further the efficient conducting of disciplinary proceedings. Such rules and/or policies shall form a part of the Governing Documents.
- d) Noncompliance with Procedure. Failure by the Association to technically comply with these procedures, or any rules or policies adopted, shall not be fatal to the process so long as there is no prejudice to the Person who has been charged with a violation. Appearance at a hearing shall constitute a waiver of any defect in notice.

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- e) Fees and Costs of Enforcement. In any legal action to enforce the Governing Documents, the prevailing party shall be awarded reasonable attorneys fees, costs and other charges incurred.

ARTICLE XIII
GENERAL PROVISIONS

- 13.1 Invalidity of Any Provision. Should any provision in this Declaration be declared invalid or in conflict with any law, the validity of all other provisions shall remain unaffected and in full force and effect.
- 13.2 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of perpetuating a uniform plan for the development and operation of a Condominium Project.
- 13.3 Term of Declaration. The provisions of this Declaration shall continue and be effective until January 1, 2010, after which date this Declaration shall be automatically extended for successive periods of ten (10) years, unless it is terminated by the Members in accordance with the law. This Declaration may be amended as provided below.
- 13.4 Amendment. This Declaration may be amended only by approval Members representing a majority of the total voting power of the Association. (Based on 162 Condominiums, this is 82 votes.) Any amendment must be recorded and shall become effective upon being recorded in the Recorder's Office of the County of San Mateo. Notice of approval shall be given to all Owners but, at the Board's discretion, need not include the full document previously submitted and voted upon.
- 13.5 Gender and Number. As used herein, the singular shall include the plural and the masculine shall include the feminine.
- 13.6 Conflicts. In the case of any conflict among Governing Documents, the sequence of priority shall be Declaration, Bylaws, then Articles.
- 13.7 Notices. Notices and requests must be in writing. Notices and requests may be given by any method reasonably calculated to give actual notice. If the notice or request is given by mail, it shall be sent by first-class and/or certified mail. If the Association uses the mail, it may send such notice to the last address of the Person shown in the records of the Association.
- 13.8 Member Responsibility. Each Member shall be liable to the Association for any damage to the Common Areas or areas which the Association must maintain, repair or replace caused by the conduct (including negligence or willful misconduct) of the Member or his or her family, guests, invitees or lessees. Each Member shall indemnify the Association for any third party claim arising out of such conduct.
- 13.9 Indemnification by Association of Directors and Officers. The Association shall, to the fullest extent permitted by law, protect, defend and indemnify its past and present Directors, Officers and Committee members from potential liability for their activity while acting in good faith and engaged in Association business. Such protection may include that provided for in (a) the Association's insurance, including the liability insurance in the case of damage to person or property, and/or (b) the Corporations Code, specifically section 7237. In the event that any

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claim of indemnification is made to the Association by such individual, the Association shall, in a timely way, tender the claim to its broker and/or insurance carriers. To the extent that the individual seeking indemnification has exposure to any uninsured loss, the Association shall also submit the matter to its counsel for a legal opinion as to Association obligations.

- 13.10 Advancement of Expenses. To the fullest extent permitted by law, the Association shall, consistent with Corporations Code section 7237(f), advance all costs of defense of an accused Officer, Director or Committee member.
- 13.11 Limitations on Personal Liability of Individual Directors/Officers.
- a) No action shall be brought against an individual Director or Officer unless expressly permitted by the provisions of Civil Code section 1365.7.
 - b) No suit or action against a Director or Officer of the Association personally shall be sustainable in any court unless commenced within twelve (12) months of the date claimant knew or should have known of alleged misconduct and/or the inception of damage or injury.
- 13.12 Completed Litigation. The Association was the plaintiff in an action against parties involved in the development, design and construction of the Project. That action, San Mateo County Superior Court Case No. 313239, was settled in 1992. The Court file is a matter of public record. The Association has substantially completed or otherwise addressed all necessary repairs.
- 13.13 Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing or mortgaging, or occupancy of his or her Unit to any Person of a specified race, sex, marital status, color, religion, ancestry, physical handicap, or national origin.
- 13.14 Davis-Stirling Common Interest Development Act. Given that the statutory law applicable to homeowner associations is frequently amended by the legislature, and given the Association's desire to keep the provisions of the Declaration consistent with applicable statutory law, the Association may find it useful to update the mandatory requirements of Davis-Stirling that are included in this Declaration (including Exhibit C). After consultation with counsel, and by unanimous vote of the Directors, the Association may periodically update the provisions of this Declaration, including the Exhibit, to reflect changes in the Davis-Stirling Common Interest Development Act which would otherwise be in conflict with and would pre-empt these provisions. Any such updated provisions shall be (1) recorded in the Official Records of San Mateo County and cross-reference these CC&Rs and (2) distributed to all Owners.
- 13.15 Variations. The Board may, upon unanimous approval of all seated Directors, allow reasonable variations and adjustments of this Declaration in order to overcome difficulties and prevent unnecessary hardships in the application of these provisions. However, such variations shall only be granted which conform to the intent and purposes of this Declaration. Further, in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements within the Project. The Board may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Where notice of a request for a variance has been given to Members potentially affected and a Member fails to object (according to the terms of the notice), that Member shall be barred from later contesting the decision of the Association. A written record must be kept of all such requests

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and proceedings. If no such record is available, there shall be a presumption that this section does not apply to any issue or dispute.

CERTIFICATE OF AMENDMENT

The Association desired to make substantial changes to the CC&Rs pursuant to the amendment provisions therein and Civil Code section 1355, and on DECEMBER 20, 2000 voted and approved the language of said changes.

This Amended Declaration of Covenants, Conditions and Restrictions incorporates the amendments, together with preexisting language and supersedes the original CC&Rs which were recorded on February 27, 1981 as Document No. 18803AS (and as may have been subsequently amended and annexed with additional Declarations) in the Official Records of San Mateo County, California.

The undersigned declare, under penalty of perjury, under the laws of the State of California, that the matters set forth in this Amendment are true and correct of their own knowledge. Executed at REDWOOD SHORES, California on JANUARY 4, 2001, ~~2000~~.

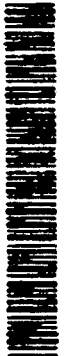
FOR: PELICAN COVE CONDOMINIUM ASSOCIATION

Denise M. Drennan
President:
DENISE DRENNAN

Kristen Kennedy
Secretary:
KRISTEN KENEDEY

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STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)
<p>On <u>JANUARY 4, 2001</u> before me, <u>GRACE BOOCHOLDT</u> Notary Public, personally appeared <u>DENISE M. DRENNAN</u> personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.</p>	
WITNESS my hand and official seal.	<p><u>Grace Boocholdt</u> Notary Public</p>



STATE OF CALIFORNIA

COUNTY OF SAN MATEO

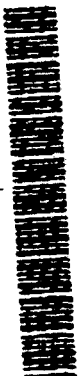
On JANUARY 12, 2001 before me, SKIP DAHL Notary Public, personally appeared KRISTEN KENEDY ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SKIP DAHL
Notary Public



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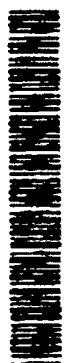
**EXHIBIT B TO CC&Rs of
PELICAN COVE CONDOMINIUM ASSOCIATION**

**ALLOCATION OF ASSESSMENTS
(CC&R Article III, Section 1(a))**

The following formula shall be applied to the Annual Assessment to determine the share attributable to any particular Unit:

Unit Types	# of Units	Percentage of Total Annual Assessment
A-1, A-2, D, E	44	.00572
AL-1, AL-2, DL, EL, G	56	.00605
B, C, CE, GL	37	.00646
BL, CL, CLE	25	.00682

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*This Exhibit is for informational purposes only and is not intended
to alter or restate any aspect of title to the Units*