

<b>RECORDING REQUESTED BY:</b>  HAMILTON COVE HOMEOWNERS ASSOCIATION  <b>WHEN RECORDED MAIL DOCUMENT TO:</b>  Norris J. Bishton, Jr., Esq. Bishton • Gubernick 6701 Center Drive West, Suite 925 Los Angeles, CA 90045	
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**RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**AND RESERVATION OF EASEMENTS FOR**  
**HAMILTON COVE**  
**AS AMENDED**





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**FOR RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR  
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**EXHIBITS ATTACHED TO THE ORIGINAL DECLARATION**

EXHIBIT "A"	ARTICLES OF INCORPORATION OF THE ASSOCIATION
EXHIBIT "B"	BYLAWS OF THE ASSOCIATION
EXHIBIT "C"	ITEMS OF COMMON EXPENSES WHICH SHALL NOT BE ASSESSED EQUALLY AMONG THE CONDOMINIUMS
EXHIBIT "D"	ROAD AGREEMENT.
EXHIBIT "E"	LEGAL DESCRIPTION OF ANNEXABLE TERRITORY
EXHIBIT "F"	SHORELINE FACILITIES AGREEMENT
EXHIBIT "G"	INCREMENT OF DEVELOPMENT PLAN
EXHIBIT "H"	COMMON FACILITIES EASEMENT AREA

**EXHIBITS ATTACHED TO THE AMENDED AND RESTATED DECLARATION**

EXHIBIT "I"	REMAINING LAND
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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR**

**HAMILTON COVE**

THIS AMENDED AND RESTATED DECLARATION is made by the HAMILTON COVE HOMEOWNERS ASSOCIATION, a California NONPROFIT MUTUAL BENEFIT CORPORATION.

**PREAMBLE**

A. Hamilton Cove, a California general partnership, its successors and assigns, ("Original Developer") developed 185 Condominiums in four phases ("Phases 1 through 4") on a leasehold estate in certain real property located in Los Angeles County, California, described as follows:

Parcels 1, 2, 3, 6, 7, 8 and a portion of 10 of Parcel Map No. 14686, as shown on a Map Filed on April 7, 1982, in Book 151, at Pages 3 to 12, inclusive, of Parcel Maps, County of Los Angeles, California [First Amendment 12/14/84, Doc. No. 84 1467960.]

which property was owned by the Santa Catalina Island Company, a Delaware corporation, ("SCIC") and which is now owned by the Hamilton Cove Homeowners Association, a California mutual benefit corporation (the "Association" or "Master Lessor.") [Pursuant to a Declaration Amending Legal Descriptions dated January 7, 2010 recorded in the Office of the Recorder of Los Angeles county as Document No: <the property is now described as follows:](#)

[Lot 1 of TRACT MAP NO. 69836, in the City of Avalon, County of Los Angeles, State of California, recorded December 31, 2009 in Book 1360, Pages 69 through 80 inclusive of Maps in the Office of the Los Angeles County Recorder.](#)

Original Developer initially owned the Improvements on the real property described in Paragraph A. Said interests derive from a Ground Lease dated September 14, 1978, a Memorandum of which was recorded on February 8, 1979, as Instrument No. 79-166655, in Official Records of Los Angeles County, California, as amended (the "Master Lease"). The lessee's interest under such Ground Lease was assigned to Original Developer by an instrument dated December 18, 1980, and recorded on December 19, 1980, as Instrument No. 80-1273943, in Official Records of Los Angeles County, California. Original Developer issued subleases for, and granted undivided interests in, the Improvements creating 185 Condominiums. Original Developer defaulted on the Master Lease. Original Developer then assigned its interest in the Master Lease to SCIC by an Assignment dated August 17, 2004, which provides that SCIC holds said interest separate and distinct from its interest in the real property covered by the Master Lease. When the Association purchased the real property described in Paragraph A, it became the Master Lessor.

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B. SCIC or its successor or assign may permit the development of additional Condominiums and the development of Single Family Residences on real property adjacent to the real property described in Paragraph A which Condominiums or Single Family Residences may be annexed into the Hamilton Cove Homeowners Association. The adjacent real property is referred to herein as the "Remaining Land" and is depicted in Exhibit "I." The greater part of the Remaining Land is described as follows:

Parcels 4, 5, 9, and a portion of 10, and Parcels 11, 12, 13 and 14 of Parcel Map No. 14686, as shown on a Map Filed on April 7, 1982, in Book 151, at Pages 3 to 12, inclusive, of Parcel Maps, County of Los Angeles, California [First Amendment 12/14/84, Doc. No. 84 1467960.]

C. It is the desire and intention of Association to continue to enforce the mutually beneficial restrictions previously imposed by a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Hamilton Cove recorded as Instrument No. 84 1262603, amended by a First Amendment recorded as Instrument 84 1467960, a Second Amendment recorded as Instrument No. 85 1467960 , a Third Amendment recorded as Instrument No. 86 491811 (the "Original CC&Rs") and the Amended and Restated Covenants, Conditions and Restrictions recorded October 4, 2005 as Document No. 05 239194 as amended hereby for the benefit of all the 185 subleasehold Condominium estates created by the Original Developer and any additional Condominiums and single family residential lots annexed into the Association in accordance with the provisions contained herein (collectively the "Project.")

D. Association hereby declares that all of the Project is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement, and sale of the Project for the purpose of enhancing the value, desirability and attractiveness of the Project. All provisions of the Original CC&Rs and this Declaration (the "Restated CC&Rs"), including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Project. All of the limitations, restrictions, reservations, rights, easements, conditions, and covenants herein shall run with and burden the Project and shall be binding on and for the benefit of all of the Project and all Persons having or acquiring any right, title or interest in the Project, or any part thereof, and their successive owners and assigns.

E. Association covenants and agrees that the undivided interest in the Common Areas, the membership in the Association, any easements conveyed therewith, and the subleasehold or fee estate in each respective Condominium or Single Family Residential Lot conveyed therewith shall not be separated or separately conveyed and each such undivided interest, membership and easement shall be deemed to be conveyed or encumbered with its respective Condominium or Single Family Residential Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Condominium or the Single Family Residence Lot. Any conveyance by an Owner of a Condominium or a Single Family Residence Lot, or any portion thereof, shall be presumed to convey the entire Condominium or

Single Family Residential Lot, together with a membership in the Association.

F. ~~Restated CC&Rs were approved by a majority of the Members on December 6, 2014. In anticipation of further amendments, the approved Restated CC&Rs were not recorded. This Restated CC&Rs with amendments to the Restated CC&Rs approved December 6, 2014~~ This Restated CC&Rs has been recorded in accordance with the provisions of Section 11018.5(a)(2)(D) of the California Business and Professions Code and the regulations and policies of the DRE, implementing the authority thereunder for incremental phasing of condominium projects.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used in this Restated CC&Rs shall have the following specified meanings:

**Section 1.01. Annexable Property.** "Annexable Property" shall mean the Remaining Land, all or any portion of which may from time to time be made subject to this Restated CC&Rs pursuant to Article XVI hereof.

**Section 1.02. Architectural Committee.** "Architectural Committee" shall mean the Architectural Review Committee created pursuant to Article IV hereof.

**Section 1.03. Articles.** "Articles" shall mean the Articles of Incorporation of the Association filed in the Office of the Secretary of State of the State of California on March 9, 1982, Document No. 1067963, a true copy of which is attached to the Original Declaration, marked Exhibit "A," as such Articles may be amended from time to time.

**Section 1.04. Assessment, Annual.** "Annual Assessment" shall mean a charge against a particular Owner and his Condominium or Single Family Residential Lot, representing a portion of the Common Expenses that are to be paid by each Owner to the Association in the manner and proportions provided herein.

**Section 1.05. Assessment, Capital Improvement.** "Capital Improvement Assessment" shall mean a charge which the Board may from time to time levy against each Owner and his Condominium or Single Family Residential Lot representing a portion of the cost to the Association for installation or construction of any Capital Improvements on any of the Common Property. Such charge shall be levied among all of the Condominiums and Single Family Residential Lots in the Project in the same proportions as Annual Assessments.

**Section 1.06. Assessment, Reconstruction.** "Reconstruction Assessment" shall mean a charge that the Board may from time to time levy against a particular Owner and his Condominium or Single Family Residential Lot representing a portion of the cost to the Association for reconstruction of any Capital Improvements on any of the Common Property. Reconstruction Assessments shall be levied among all of the Condominiums and Single Family Residential Lots in the Project in the same proportions as the relative interior square foot floor areas of the Residential Elements of the Condominiums or Single Family Residential Lots,

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expressed as percentages, and computed by dividing the interior square foot floor area of the Residential Element of each Condominium or Single Family Residence by the total interior square foot areas of the Residential Elements of all Condominiums and Single Family Residences in the Project. If a Single Family Residential Lot has not been improved with a Residence when the calculation is made, the interior square foot area for such lot shall be the average interior square footage of all of the Single Family Residence Lots that have been improved.

**Section 1.07. Assessment, Special.** "Special Assessment" shall mean a charge against a particular Owner directly attributable to, or reimbursable by, the Owner equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Restated CC&Rs, or a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for in this Restated CC&Rs. Special Assessments shall not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement and Reconstruction Assessments.

**Section 1.08. Association.** "Association" shall mean HAMILTON COVE HOMEOWNERS ASSOCIATION, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns.

**Section 1.09. Beneficiary.** "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee or Beneficiary.

**Section 1.10. Board or Board of Directors.** "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

**Section 1.11. Budget.** "Budget" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Restated CC&Rs- which Budget shall be prepared pursuant to this Restated CC&Rs and the Bylaws. Each Budget shall identify all expenses that benefit all Classes of Owners and all expenses that benefit less than all Classes of Owners.

**Section 1.12. Bylaws.** "Bylaws" shall mean the Amended and Restated Bylaws of the Association as such Bylaws may be amended from time to time.

**Section 1.13. Class I Land.** The "Class I Land" is the land improved with 185 Condominiums in Phases 1 through 4 and the land underlying the Common Areas and Common Facilities utilized by the Class I Owners.

**Section 1.14. Class II Land.** The "Class II Land" is the land improved with Condominiums in Increments 5B through 5F and the land underlying the Common Areas and Common Facilities developed during the construction of said Increments.

**Section 1.15. Class III Area.** The "Class III Area" is the area where the Single Family Residential Lots created in Increment 5G are located and any Common Areas and

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Common Facilities developed during the construction of said Increment.

**Section 1.16. Classes of Owners.** Owners shall be divided into three Classes as follows:

Class I consisting of the Owners of the 185 Condominiums developed in Phases 1 through 4. Class I Owners own Condominiums located on the Class I Land.

Class II consisting of the Owners of Condominiums or Single Family Residences located on property annexed into the Association after the date hereof. Class II Owners will own Condominiums and Single Family Residences located on the Class II Land.

Class III consisting of the Owners of Single Family Residential Lots annexed into the Association after the date hereof. Class III Owners will own Single Family Residential Lots located on the Class III Property or in the Class III Area.

**Section 1.17. Close of Escrow.** "Close of Escrow" shall mean the date on which a Condominium Sublease or memorandum thereof is recorded conveying a Condominium or a Single Family Residence or a deed is recorded conveying a Condominium or Single Family Residential Lot.

**Section 1.18. Common Areas or Common Property.** "Common Areas" or "Common Property" shall mean all areas on the Project, except the Condominiums and Single Family Residential Lots and Residences. Common Areas shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project Improvements wherever located (except the outlets thereof when located within the Condominiums), the land upon which the Project Improvements are located, the airspace above the Project Improvements, private streets or driveways, walkways, common stairways, parking areas, and landscaping on those areas of the Project which are not defined as a part of the Condominiums.

**Section 1.19. Common Expenses.** "Common Expenses" shall mean those expenses for which the Association is responsible under this Restated CC&Rs, including the actual and estimated costs of maintenance, management, operation, repair, and replacement of the Common Property, unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments; the cost of maintenance of the recreational facilities on the Common Property; the costs of any and all utilities metered to more than one Condominium and other commonly metered charges for the Project; the costs of trash collection and removal; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, security, and other services benefitting the Common Property; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, earthquake and flood insurance, and other

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Doc. No. 84 1262603 as amended 84 1467960, 85 348589 and 86 491811 and restated 09/30/04 recorded as Doc. No. 05 2391948

insurance covering the Project and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Project; amounts paid by the Association for discharge of any lien or encumbrance levied against the Project, or portions thereof and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Project for the common benefit of the Owners.

**Section 1.20. Condominium.** "Condominium" shall mean an equal undivided interest in a subleasehold or fee estate in Phases 1 through 4 and an equal undivided fee simple interest in the Improvements on such Phases, together with a separate subleasehold or fee interest in a Unit and all easements and licenses appurtenant thereto. Such fractional, undivided interest in the subleasehold or fee and such fractional, undivided fee simple interest for Phases 1 through 4 shall be equal to a fraction whose numerator is one (1) and whose denominator is the number of Units in such Phase. In Increments 5B through 5F, "Condominium" shall mean an equal undivided interest ~~in a leasehold estate and an equal undivided~~ fee simple interest in the Improvements on such Increment, together with a separate undivided interest in a Unit and all easements and licenses appurtenant thereto. Such fractional, undivided interest in the leasehold and such fractional, undivided fee simple interest for any Increment shall be equal to a fraction whose numerator is one (1) and whose denominator is the number of Units in such Increment.

**Section 1.21. Condominium Building.** "Condominium Building" shall mean any building or structure located in the Project that contains a Condominium or Condominiums.

**Section 1.22. Condominium Plan.** "Condominium Plan" shall mean the engineering drawings and related materials for an Increment, as amended from time to time, showing the diagrammatic floor plans of the Condominiums, the boundaries of the Condominiums, the Common Areas, and, where applicable, dimensions, specific alternative uses as authorized by this Restated CC&Rs, and such other information reasonably necessary to identify a Condominium in such Increment as approved by the Design Committee.

**Section 1.23. Condominium Sublease, Sublease.** "Condominium Sublease" or "Sublease" shall mean a Sublease of Condominium and Grant Deed of Improvements executed by the Original Developer and a purchaser of a Condominium in Phases 1 through 4 from the Original Developer.

**Section 1.24. Debris Basin.** "Debris Basin" refers to that portion of the drainage system located in the vicinity of the Maintenance Building through which storm water passes before proceeding in an underground storm sewer to the ocean.

**Section 1.25. Declaration.** "Declaration" shall mean the within Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time as provided herein.

**Section 1.26. Deed of Trust.** "Deed of Trust" shall mean a Mortgage or a Deed of Trust, as the case may be.

**Section 1.27. Design Committee.** "Design Committee" means a committee established by the Association, SCIC and a Developer for the purpose of reviewing and approving plans for the development of the Remaining Land or any portion thereof.

**Section 1.28. Developer.** "Developer" refers to any Person who has entered into a contract with SCIC and the Association with regard to developing any portion of the Remaining Land.

**Section 1.29. DRE.** "DRE" shall mean the California Department of Real Estate and any successors thereto.

**Section 1.30. Eleven Class I Owners.** The "Eleven Class I Owners" refers to the Owners of Condominiums whose Subleases differ in terms from the Subleases held by the remaining 174 Class I Owners calling for only nominal rent and transfer fees.

**Section 1.31. Family.** "Family" shall mean one or more natural Persons each related to the other by blood, marriage or adoption, or one or more natural Persons not all so related, but who maintain a common household in a Condominium or Single Family Residence.

**Section 1.32. FHA.** "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government that succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

**Section 1.33. FHLMC.** "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970 and any successors to such corporation.

**Section 1.34. Fiscal Year.** "Fiscal Year" shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

**Section 1.35. FNMA.** "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and any successors to such corporation.

**Section 1.36. Front End Payment Option.** "Front End Payment Option" refers to an opportunity for a Class I Owner to pay his pro rata share of the purchase price for the Class I Land, including his pro rata share of costs incurred in connection with the acquisition, other than any loan fees, at the time said land was purchased from SCIC. Any Class I Owner electing such option shall not be required to participate in the repayment of the Master Land Loan.

**Section 1.37. GNMA.** "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

**Section 1.38. Improvements.** "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, the exterior

surfaces of any visible structure, and the paint on such surfaces and the Infrastructure.

**Section 1.39. Increment.** "Increment" shall mean the construction and development of Condominium Buildings or Single Family Residential Lots and appurtenant Improvements that shall constitute separate construction phases of Phase 5. The Increments in Phase 5 are as follows:

Increment 5A – purchase of the land underlying the original 185 Condominiums by the Association;

~~Increments 5B, 5C, 5D and 5E shall each consist of one of the existing condominium building pads (Nos. 14, 19, 20 and 21), plus one or more triplex condominium sites;~~

~~Increment 5F – the balance of the triplex condominium sites, if any; and~~

~~Increment 5G – lots for single family residences.~~

~~(b) Increment 5B – three (3) lots for single family residences;~~

~~(b) Increment 5C – twelve single family Villas to be built on Villa Lots created from property formerly designated condo buildings nos. 19, 20 and 21 together with some adjacent property (shaded) as depicted in Exhibit A attached hereto;~~

~~(c) Increment 5D – three (3) Villas, a Manager's Residence and a swimming pool, as described in paragraph 5 of this Fourth Amendment to Purchase and Sale and Annexation Agreement ("Fourth Amendment"), on the site of former condo building No. 14;~~

~~(d) Increment 5E – one or more Triplex Condo Unit sites (three (3) units each site), or an equal number of Villas as may be requested by Developer;~~

~~(e) Increment 5F – one or more Triplex Condo Unit sites (three (3) units each site) or an equal number of Villas;~~

~~(f) Increment 5G – the balance of the Triplex Condo Unit (three (3) units each site) or an equal number of Villas;~~

~~(g) Increment 5H – up to twenty-one (21) additional lots ("Estate Lots") for single family estate residences.~~

The Board may amend the Increments of Phase 5 ~~if approved by SCIC~~ from time to time.

**Section 1.40. Infrastructure.** "Infrastructure" includes all Improvements, other than buildings, housing, Condominiums, and Single Family Residences, including but not limited to walkways, sprinkler pipes, swimming pools, jacuzzi spas, tennis courts, recreation buildings, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, planted trees and shrubs, poles, signs, water softener fixtures or equipment, piers, docks, putting course, Common Area facilities, gates and the utility systems.

**Section 1.41. Maintenance Building.** "Maintenance Building" refers to the existing steel building and surrounding area, which building is an Improvement.

**Section 1.42. Manager.** "Manager" shall mean the Person employed by the Association, if any, pursuant to and limited by Section 2.10 hereof, and delegated the duties, power or functions of the Association as limited by said section.

**Section 1.43. Master Land Loan.** "Master Land Loan" means any loan obtained by the Association to permit it to acquire the Class I Property.

**Section 1.44. Master Land Loan Monthly Assessment.** "Master Land Loan Monthly Assessment" refers to the amount Class I Owners who did not exercise the Front End Payment Option and those of the Eleven Class I Owners who elected not to participate in the purchase of the Class I Land will have to pay each month to the Association to enable the Association to repay the Master Land Loan.

**Section 1.45. Master Lease.** "Master Lease" shall mean that certain Ground Lease described in Paragraph A of the Preamble of this Restated CC&Rs.

**Section 1.46. Master Lessee.** "Master Lessee" shall mean the Person owning the right, title and interest as lessee under the Master Lease at any given point in time.

**Section 1.47. Master Lessor.** "Master Lessor" shall mean any Person owning the right, title, and interest as lessor under the Master Lease at any given point in time. As of the date this Restated CC&Rs is recorded, the Master Lessor is the Association.

**Section 1.48. Member, Membership.** "Member" shall mean every Person holding a membership in the Association, pursuant to Section 2.03 hereof. "Membership" shall mean the property, voting, and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

**Section 1.49. Mortgage.** "Mortgage" shall mean any recorded mortgage or deed of trust or other conveyance of a Condominium or Single Family Residential Lot to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage."

**Section 1.50. Mortgagee, Mortgagor.** "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage) and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

**Section 1.51. Notice and Hearing.** "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws.

**Section 1.52. Notice of Addition.** "Notice of Addition" shall mean an instrument recorded pursuant to Article XVI hereof to annex all or any portion of the Annexable Property to the Project.

**Section 1.53. Operating Fund.** "Operating Fund" refers to the account or accounts in which the Association deposits money received, other than money for the Reserve Fund, and from which the operating expenses of the Association are paid.

**Section 1.54. Original CC&Rs.** "Original CC&Rs" means the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Hamilton Cove recorded as Instrument No. 84 1262603, amended by a First Amendment recorded as Instrument No. 84 1467960, a Second Amendment recorded as Instrument No. 85 1467960, a Third Amendment recorded as Instrument No. 86 491811 and a Fourth Amendment recorded as recorded as Instrument No. 05 2391948.

**Section 1.55. Original Developer.** "Original Developer" refers to Hamilton Cove, a California general partnership, its successors and assigns, the Declarant of the Original CC&Rs, and the Master Lessee on the Master Lease.

**Section 1.56. Owner.** "Owner" shall mean the record Owner, whether one or more Persons, of a Condominium or Single Family Residential Lot. The term "Owner" shall include a seller under an executory contract of sale but shall exclude Mortgagees.

**Section 1.57. Person.** "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

**Section 1.58. Phase 5.** "Phase 5" shall mean purchase of the Class I Land and the Increments described Section 1.39 above.

**Section 1.59. Phase of Development.** "Phases of Development" or "Phase" shall mean (a) Phases 1 through 4 during which 185 Condominiums were developed and (b) the Increments of Phase 5.

**Section 1.60. Phase 5 Land Loan.** "Phase 5 Land Loan" is a loan that may be made by the Developer of Increments 5B through 5F which will be repaid by Class II Owners in the same manner as the Master Land Loan will be repaid by Class I Owners.

**Section 1.61. Phase 5 Land Loan Monthly Assessment.** "Phase 5 Land Loan Monthly Assessment" refers to the amount Class II Owners will have to pay each month to the Association to enable the Association to pay the Class II Owner's pro rata portion of the Phase 5 Land Loan.

**Section 1.62. Project.** "Project" shall mean the development of Phases 1 through 4 and the Remaining Land with Condominiums and Single Family Residential Lots.

**Section 1.63. Record, File, Recordation.** "Record," "File," or "Recordation" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder of Los Angeles County, California.

**Section 1.64. Remaining Land.** "Remaining Land" means the real property described in Paragraph B of the Preamble and depicted in Exhibit "I" upon which Condominiums and Single Family Residential Lots may be developed after the date hereof, which Condominiums and Single Family Residential Lots may be annexed into the Association pursuant to the provisions contained herein. The exact dimensions of the parcels constituting the Remaining Land shall be as set out in documents recorded or to be recorded for that purpose.

**Section 1.65. Residence.** "Residence" shall mean a Condominium, intended for use by a single family or the building constructed on a Single Family Residential Lot.

**Section 1.66. Restated CC&Rs.** "Restated CC&Rs" refers to this Declaration.

**Section 1.67. Restrictions.** "Restrictions" shall mean this Restated CC&Rs, the Articles, Bylaws and the Rules and Regulations of the Association from time to time in effect.

**Section 1.68. Reserve Fund.** "Reserve Fund" refers to a fund separately established and maintained by the Association in accordance with applicable provisions of the California Civil Code.

**Section 1.69. Rules and Regulations.** "Rules and Regulation" shall mean the rules and regulations adopted by the Board pursuant to the Original Declaration and this Restated CC&Rs or the Bylaws, as such Rules and Regulations maybe amended from time to time.

**Section 1.70. Santa Catalina Island Company.** The "Santa Catalina Island Company" or "SCIC" shall mean the Santa Catalina Island Company, a Delaware corporation, its successors and assigns.

**Section 1.71. Single Family Residential Lot.** "Single Family Residential Lot" refers to any lot annexed into the Association upon which a Single Family Residence may be constructed. A Single Family Residence may be located in either the Class II or the Class III area.

**Section 1.72. Sublease Rent.** "Sublease Rent" is the rent payable under a Condominium Sublease or Subleases.

**Section 1.73. Transfer Fee.** "Transfer Fee" is the amount to be paid upon the transfer of a Sublease.

**Section 1.74. Unit.** "Unit" shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in the Project. Each of the Units shall be a separate subleasehold or fee simple estate, as separately shown, numbered and designated in any Condominium Plan. Each such Unit consists of a living area space or spaces ("Residential Element") bounded by and contained within the interior unfinished (meaning exclusive of wall

coverings, floor coverings, fixtures or decorations) surfaces of the perimeter walls, floors, ceilings, windows and doors of each Residential Element, as shown and defined in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan, Original Declaration, or this Restated CC&Rs, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries as shown on the Condominium Plan or defined in the deed, the Original Declaration and this Restated CC&Rs, and the boundaries of a building as constructed or reconstructed. In simple language, a "Unit" is everything inside the walls of a Condominium which is the sole property of a sublessee or fee simple owner. A sublessee or fee simple owner has an undivided interest in the walls and Improvements in the Increment where the Unit is located.

**Section 1.75.** VA. "VA" shall mean the Veterans Administration of the United States of America and any department or agency of the United States government that succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

## ARTICLE II

### HAMILTON COVE HOMEOWNERS ASSOCIATION

**Section 2.01. Organization of Association.** The Association is or shall be incorporated under the name of HAMILTON COVE HOMEOWNERS ASSOCIATION as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.

**Section 2.02. Duties and Powers.** The duties and powers of the Association are those set forth in this Restated CC&Rs, the Articles and Bylaws, together with its general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this Restated CC&Rs. The Association shall further have the right to install or construct capital Improvements on the Common Property. The Association may at any time, and from time to time reconstruct, replace or refinish any Improvement or portion thereof upon the Common Property in accordance with the original design, finish or standard of construction of such Improvement; replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Property. The Association may employ personnel necessary for the effective operation and maintenance of the Common Property, including the employment of legal, management and accounting services. The Association shall make available for inspection by any prospective purchaser of a Condominium or Single Family Residential Lot, any Owner of a Condominium or Single Family Residential Lot, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Condominium or Single Family Residential Lot, current copies of the Restated CC&Rs, the Articles, the Bylaws, the Rules and Regulations and ~~all other books, records, and~~ audited

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financial statements of the Association. The Association will provide private security on site. This may involve at least one guard at the entrance gate and may involve other personnel at the Association's discretion.

**Section 2.03. Membership.** Every Owner, upon becoming the Owner of a Condominium or Single Family Residential Lot, shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Ownership of a Condominium or Single Family Residence shall be the sole qualification for Membership in the Association. All Memberships shall be appurtenant to the Condominium or Single Family Residential Lot conveyed, and a Person shall be deemed an Owner of a Condominium or Single Family Residential Lot only upon recordation of ~~a an assignment of the~~ Condominium Sublease or a grant deed, or memorandum thereof, conveying the Condominium to such Person or upon the recordation of a grant deed conveying a Single Family Residential Lot to such Person. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be provided in the Restrictions.

**Section 2.04. Transfer.** The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Condominium or Single Family Residential Lot and then only to the purchaser ~~or Beneficiary of~~ such Condominium or Single Family Residential Lot. A prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class Member who has sold his Condominium or Single Family Residential Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to the contract purchaser his Membership rights in the Association. The delegation shall be in writing and shall be delivered to the Board before the contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Condominium or Single Family Residential Lot until title to the Condominium or Single Family Residential Lot sold is transferred, as further provided in Section 5.01 of this Restated CC&Rs. If the Owner of any Condominium or Single Family Residential Lot fails or refuses to transfer the Membership registered in his name to the purchaser of the Condominium or Single Family Residential Lot upon transfer of title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Association may levy a reasonable processing fee against a new Owner and his Condominium or Single Family Residential Lot (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the membership to the new Owner on the records of the Association.

**Section 2.05. Classes of Membership.** The Association shall have three (3) classes of voting Membership: Class I Owners, Class II Owners, and Class III Owners as defined in Section 1.13.

**Section 2.06. Voting Rights.**

(a) All voting rights shall be subject to the Restrictions. Except as provided in Section 14.02 of this Restated CC&Rs and Section 4.08 of the Bylaws, any provision of this Restated CC&Rs, the Articles or Bylaws which expressly requires the vote or written consent of a specified percentage (i.e., other than actions requiring merely the vote or written consent of a

majority of a quorum) of the voting power of the Association before action may be undertaken shall require the approval of such specified percentage of the voting power of the Membership.

(b) At any meeting of the Association, each Owner shall be entitled to cast no more than one (1) vote for each Condominium or Single Family Residential Lot owned as shown on the books and records of the Association. Where there is more than one (1) record Owner of a Condominium or Single Family Residential Lot ("co-owners"), all of those co-owners shall be Members and may attend any meeting of the Association, but only one (1) of those co-owners shall be entitled to exercise the single vote to which the Condominium or Single Family Residential Lot is entitled. Co-owners owning the majority interests in a Condominium or Single Family Residential Lot shall from time to time designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium or Single Family Residential Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation has been revoked, the vote for the Condominium or Single Family Residential Lot shall be exercised ~~as~~ by the co-owner owning the majority interests in the Condominium or Single Family Residential Lot mutually agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the corresponding voting co-owner is acting with the consent of his co-owners. No vote shall be cast for any Condominium or Single Family Residential Lot if the co-owners present in person or by proxy owning the majority interests in such Condominium or Single Family Residential Lot cannot agree to said vote or other action. The nonvoting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Condominium or Single Family Residential Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws of the Association shall be deemed to be binding on all Owners, their successors and assigns. In the event that a Condominium or Single Family Residential Lot is owned by an entity other than an individual or individuals, only the person designated in writing to the Association by the entity shall have the right to vote.

(c) Each Class of Owners shall have the right to vote on all matters affecting just that Class of Owners on matters put to a vote of the Class by the Board in accordance with this Restated CC&Rs or the Bylaws of the Association. Any provision of this Restated CC&Rs applicable to less than all of the Owners can only be amended by a 2/3rds vote of the Class or Classes to which the provision is applicable.

**Section 2.07. Repair and Maintenance by the Association.** Subject to Article X pertaining to destruction of Improvements and Article XI pertaining to eminent domain, the Association shall paint, maintain, repair and replace the Common Property and Improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Property and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance for a residential development of similar cost and character. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair, or Improvement of the Condominiums or Single Family Residences which are the responsibility of the Owners as provided in Article II, Section 2.09. Association maintenance, repairs and Improvements shall include, without limitation, the right without obligation to perform all corrective janitorial, landscaping and repair work within any

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Condominium, if the Owner fails to repair it; the repair and payment for all centrally metered utilities, water charges, and mechanical and electrical equipment in the Common Property; payment of all charges for all utilities which serve individual Condominiums but which are subject to a common meter; payment of all Common Expenses and charges for water and utilities serving recreational amenities; the repair and maintenance of all walls, private driveways and other means of ingress and egress within the Project, and ~~if determined by the Board to be economically feasible,~~ an inspection and preventative program for the prevention and eradication of infestation by wood-destroying and other pests and organisms in the Project. The repair of any damage caused by wood-destroying and other pests and organisms shall be the responsibility of the Association. All such costs of maintenance, repairs and replacements for the Project shall be paid for as Common Expenses out of the Association Operating Fund as provided in this Restated CC&Rs. All work performed by the Association for and on behalf of an Owner, which work is not the responsibility of the Association, shall be charged to the Owner as a Special Assessment. It shall further be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Restated CC&Rs and to cause the Project to be inspected by the Architectural Committee for any violation thereof. The cost of any maintenance, repairs or replacements by the Association arising out of, or caused by, the act of an Owner or such Owner's Family, tenants, guests, invitees, or agents shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner. Without limiting the generality of the foregoing, the Association shall maintain, repair and replace as necessary, all streets, landscaping, entrance medians, common ownership parkways, parking areas, recreational areas, sewers, water and salt water systems in the Project unless such maintenance, repair and replacement is undertaken by a governmental entity or a public utility pursuant to a written agreement with the Association. Any such agreement may authorize such governmental entity or public utility to record a lien against the Common Property if the Association fails to pay amounts due under the agreement. The Association shall also maintain, repair and replace, as necessary, the individual sprinkler systems for the street landscaping on the Common Property. |

**Section 2.08. Unsegregated Real Property Taxes.** To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Project. In addition, if all of the Condominiums in a Phase of Development or Increment are taxed under a blanket tax bill covering all of such Phase or Increment, each Owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated equally among the Owners and their Condominiums in such Phase or Increment based upon the total number of Condominiums to be constructed in such Phase or Increment, as shown on the Condominium Plan for such Phase. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in such Phase or Increment a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall levy a Special Assessment against any delinquent Owner in the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and may, in addition, include as part of the Special Assessment an amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax

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bill for a Phase of Development, which late charge results from the failure of the delinquent Owner(s) to make timely payment of his proportionate share of the taxes.

**Section 2.09. Repair and Maintenance by Owners.** Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his ~~Condominium Unit~~, as well as the doors, windows (including replacing glass and any damage that is the responsibility of the Owner of the Unit, but excluding structural repairs), exterior light fixtures (as approved by the Association) actuated from switches controlled from, or separately metered to, such Owner's Condominium, and the interior surfaces of the walls, ceilings, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition, in accordance with the Condominium Plan and the original construction design of the Improvements in the Project. However, no bearing walls, ceilings, floors and other structural or utility bearing portions of the buildings housing the Condominium shall be pierced or otherwise altered or repaired without the prior written approval of the plans for the alteration or repair by the Architectural Committee and the City of Avalon, if required. It shall further be the duty of each Owner to pay when due all charges for any utility service that is separately metered to his Condominium. Subject to any required approval of the Architectural Committee, each Owner shall be responsible for maintaining those portions of any heating and cooling equipment and other utilities which are located within or which exclusively serve his Condominium. Each Owner of a Class II Condominium or Single Family Residence constructed on Class II Land and each Owner of a Class III Single Family Residential Lot shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, any Residence or Condominium constructed on said ~~Lot~~ Class II Land or in the Class III Area and shall landscape and maintain all landscaping on said ~~Lot~~ areas in accordance with a landscaping plans approved by the Design Committee. Each Owner shall maintain the water lines within the Unit in order to avoid damaging leaks and assure that toilets are properly shutting off. After reasonable notice to an Owner except in the case of an emergency, the Association may enter a Unit for the purpose of inspecting and repairing water lines and toilets. Any repairs or water lines and toilets shall be charged to the Owner of the Unit.

**Section 2.10. Use of Agent.** The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of such contract for the furnishing of services to the Association shall not exceed one (1) year, renewable by agreement of the parties for successive one year periods, and such contract shall be terminable by the Association, acting through the Board, at any time (a) for cause upon thirty (30) days' written notice thereof, and (b) without cause or the payment of a termination fee upon ninety (90) days' written notice.

**Section 2.11. Authority to Borrow.** The Board of Directors is authorized to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the name of the Association, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt, securities, and collateralization therefor, so long as to do so does not result in a Special Assessment to members and any resulting Annual Assessment complies with California Civil Code Section 1366. Otherwise, should the proposed borrowing not comply with Section 1366 or result in a Special

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Assessment, the proposal shall require the approval of at least 51% of the voting power of the Association.

**Section 2.12. Acquisition of the Class I Land and Development of the Remaining Land.**

(a) The Board of Directors was authorized to enter into such agreements as are appropriate so that the Association may acquire the Class I Land from SCIC. In connection with any such acquisition, Class I Owners shall have the opportunity to elect the Front End Payment Option. In addition, the Eleven Class I Owners shall have the option of participating in the acquisition by electing the Front End Payment Option or agreeing to pay the Master Land Loan Monthly Assessment. Any of the Eleven Class I Owners electing to participate in the acquisition of the Class I Land shall have the same rights as those Class I Owners who participate in the acquisition. The Subleases of the Eleven Class I Owners electing not to participate shall remain in full force and effect without amendment and said Owners' right title and interest in their Condominiums shall terminate upon termination of their subleases.

(b) The Board of Directors is authorized to enter into such agreements as are appropriate so that the Remaining Land may be developed and annexed into the Association as provided herein. The exact boundaries of the Class I Land and the Remaining Land may be altered by agreement of the Board of Directors and SCIC.

(c) Any disputes with regard to the acquisition of the Class I Land and the development of the Remaining Land shall be resolved by mediation and binding arbitration. Any dispute between a Class I Owner and the Association, SCIC or the Developer of the Remaining Land regarding any aspect of Phase 5 shall be resolved by mediation and binding arbitration and any provision in any agreement regarding Phase 5 between the Association, SCIC or the Developer providing for attorneys fees and costs to the prevailing party shall apply to a Class I Owner.

**Section 2.13. Master Land Loan.** The Board had the specific authority to borrow sufficient funds, the Master Land Loan, to acquire the Class I Land from SCIC, said loan to be secured by the assets of the Association as deemed appropriate by the Board, provided the Master Land Loan contains the following provisions:

(a) Each Class I Owner who elects the Front End Payment Option or his successors and assigns shall be entitled to receive title to his Condominium and a pro rata fee interest in the Phase where his Condominium is located when the Master Land Loan is paid in full (or earlier if this can be arranged with the Master Land Loan lender) or, in the event of a foreclosure of the security for the Master Land Loan, no later than the expiration of the term of the Master Land Loan and shall not be responsible for the repayment of any portion of the Master Land Loan;

(b) Each Class I Owner or his successors and assigns who pays all of the Master Land Loan Monthly Assessments shall be entitled to receive title to his or her Condominium and a pro rata fee interest in the Phase where the Condominium is located whenever the Master Land Loan is paid in full, or, if he or she has paid all of the Master Land

Loan Monthly Assessments, in the event of a foreclosure of the security for the Master Land Loan, no later than the expiration of the term of the Master Land Loan;

(c) So long as a Class I Owner is not in default in the payment of his Master Land Loan Monthly Assessment and the payment of any other assessment on his Condominium, no foreclosure of the security for the Master Land Loan will result in such Class I Owner's loss of the right to occupy his Condominium and to use the Common Areas of the Project as provided in this Restated CC&Rs;

(d) So long as an Eleven Class I Owner who elects not to participate in the repayment of the Master Land Loan makes any and all payments called for by his Sublease, said Owner shall have the right to occupy his Condominium, and no foreclosure of the security for the Master Land Loan will result in such Class I Owner's loss of the right to occupy his Condominium and to use the Common Areas of the Project as provided in this Restated CC&Rs; and

(e) Class II and Class III Owners shall not have any responsibility to repay any portion of the Master Land Loan.

The Master Land Loan will be repaid by means of the Master Land Loan Monthly Assessment paid by those Class I Owners not electing the Front End Payment Option and those of the Eleven Class I Owners electing to participate in the acquisition of the Class I Land. The amount of the Master Land Loan Monthly Assessment will be determined by dividing the amount required to service the Master Land Loan each month by the number of Class I Owners responsible for repayment of the Master Land Loan. The Class I Owners responsible for repaying the Master Land Loan shall be all Class I Owners except those who exercise the Front End Payment Option and those of the Eleven Class I Owners who elect not to participate in the acquisition of the Class I Land. The Master Land Loan Monthly Assessment may be documented by a note and deed of trust on a Class I Owner's Condominium. Payments on the note shall be in lieu of paying the Master Land Loan Monthly Assessment. The Association may collect one Master Land Loan Monthly Assessment in advance in order to have a reserve from which the monthly payment on the Master Land Loan is made. Any such amount collected shall be deposited in the Reserve Fund, used only to make monthly payments on the Master Land Loan and separately accounted for. Any portion of said reserve used to pay the amount not paid by a defaulting Class I Owner shall be restored to the reserve when said amount is collected from the defaulting Class I Owner.

#### **Section 2.14. Rights of Class I Owners After Acquisition of the Class I Land.**

**A. Front End Payment Option.** A Class I Owner, or his successors and assigns, who elects the Front End Payment Option and makes full payment shall be excused from paying any rental payments or transfer fees as called for by his Sublease and shall receive title to his Condominium and a pro rata fee interest in the Phase where his Condominium is located when the Master Land Loan is paid in full (or earlier if this can be arranged with the Master Land Loan lender), even in the event of a foreclosure of the security for the Master Land Loan, and shall not be responsible for the repayment of any portion of the Master Land Loan.

**B. Master Land Loan Monthly Assessment.** Each Class I Owner, or his successors and assigns, who pays all of the Master Land Loan Monthly Assessments shall be entitled to receive a pro rata fee interest in the Phase where his Condominium is located whenever the Master Land Loan is paid in full, even in the event of a foreclosure of the security for the Master Land Loan. In addition, each Class I Owner paying the Master Land Loan Monthly Assessment who is not in default shall be excused from paying any rental payments or transfer fees as called for by his Sublease.

**C. Termination of Subleases.** The Association shall terminate the Subleases of those Class I Owners, their successors and assigns who participated in the acquisition of the Class I Land by recording a quitclaim deed to such Class I Owners conveying fee title to such Class I Owner's Condominium and a pro rata interest in the land in the Phase where the Condominium is located no later than three months after the Master Land Loan is paid in full.

**Section 2.15. Default in Making Payment of Master Land Loan Monthly Assessment.** In the event a Class I Owner defaults in making payment of the Master Land Loan Monthly Assessment, the following shall occur:

(a) The Association shall have the same rights to collect unpaid Master Land Loan Monthly Assessments as any other assessment as provided in this Restated CC&Rs.

(b) The Association may elect to treat all of the terms of the defaulting Class I Owner's Sublease as reinstated and thereafter collect the rental payments and transfer fees called for by the Sublease for the remaining term of the Sublease by giving written notice of such election to the defaulting Class I Owner. Upon termination of the Sublease, the defaulting Class I Owner shall have no further interest in his Condominium.

(c) The Association may pay that portion of the monthly Master Land Loan payment that would have been paid by the defaulting Class I Owner from funds collected in accordance with Section 2.13 and placed in the Reserve Fund or from the Operating Fund.

(d) No delay or failure by the Association to enforce its rights as provided herein shall operate as a waiver of such rights.

(e) In the event the Association pursues its remedy under subparagraph (a) above and collects all of the Master Land Loan Monthly Assessments due from the defaulting Class I Owner, and said Owner is not otherwise in default of this Restated CC&Rs, the Association may declare the default cured. Thereafter, the defaulting Class I Owner shall be restored to the rights he had prior to defaulting.

### **ARTICLE III**

#### **RIGHTS IN COMMON PROPERTY**

**Section 3.01. Association Easement.** The Association shall have an easement over the Common Areas for performing its duties and exercising its powers described in this Restated CC&Rs. The Association's obligations to maintain the Common Property in any Increment shall

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commence on the date Annual Assessments commence on Condominiums in such Increment. Until commencement of Annual Assessments on Condominiums in any Increment, the Developer developing the Increment shall maintain the Common Property in such Increment.

**Section 3.02. Partition.** Except as provided in this Restated CC&Rs, there shall be no judicial partition of the Common Areas, or any part thereof, for the term of the Project, nor shall any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

**Section 3.03. Member Easements of Use and Enjoyment of Common Property.** Subject to the provisions of this Restated CC&Rs, every Member of the Association shall have for himself, his Family, his tenants and guests, a nonexclusive easement of access, ingress, egress, and enjoyment of, in and to the Common Property except recreational facilities located on the Class III Property, and such easements shall be appurtenant to and shall pass with title to every Condominium in the Project. Such easements shall commence as to each Increment when the Condominiums in such Increment become subject to assessment. Every Class III Owner, his Family and guests shall have a nonexclusive easement of access and enjoyment of Common Property recreational facilities located on the Class III Property provided said recreational facilities are installed and maintained solely at the expense of Class III Owners.

**Section 3.04. Extent of Members' Easements.** The rights and easements of use and enjoyment of the Common Property created by this Restated CC&Rs shall be subject to the Restrictions, which include, without limitation, the following:

- (a) The right of the Board to suspend the rights and easements of any Member and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreation facilities located on the Common Property, for any period during which the payment of any Annual, Special, Capital Improvement, Master Land Loan Monthly Assessment or Reconstruction Assessment against the Member and his Condominium or Single Family Residential Lot remains delinquent, and, after Notice and Hearing as provided in the Bylaws, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions, it being understood that any suspension for either nonpayment of any Assessment or breach of the Restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this Restated CC&Rs;
- (b) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Property and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Property for the benefit of the Members of the Association;
- (c) The right of the Association, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Property for purposes not inconsistent with the intended use of the Project as a residential Condominium project;
- (d) The right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance and landscaped areas and similar areas of the Property;

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(e) The right of the Association to reasonably limit the number of guests and tenants of the Owners using the Common Property; and

(f) The right of the Association, acting through the Board, to establish uniform Rules and Regulations for the use of the Common Property, as provided in this Restated CC&Rs.

(g) Rights of access to and use of the beach areas in the Project by the general public pursuant to any access right of the general public as may exist from time to time provided that such access is permitted only over the approved access path described in the Irrevocable Offer to Dedicate an Easement for Vertical Public Access recorded on May 5, 1981, as Instrument No. 489930, in Official Records of Los Angeles County, California, and is not Permitted over the remainder of the Common Property.

**Section 3.05. Delegation of Use.** Any Member entitled to the right and easement of use and enjoyment of the Common Property may delegate, in accordance with the Bylaws, his right to use and enjoyment of the Common Property to his tenants, contract purchasers or subtenants who reside in his Condominium or Single Family Residence, subject to reasonable regulation by the Board. An Owner who has made such delegation of rights shall not be entitled to use or enjoy the recreational facilities or equipment of the Project for so long as such delegation remains in effect.

**Section 3.06. Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association, or affect the release of his Condominium or Single Family Residential Lot from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning his Condominium or Single Family Residential Lot.

**Section 3.07. Damage by Member.** To the extent permitted by California law, each Member shall be liable to the Association for any damage to the Common Property not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Member, his guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Common Property from the Member, or his or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Condominium or Single Family Residential Lot, the liability of the owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Member's Condominium or Single Family Residential Lot and may be enforced as provided herein.

**Section 3.08. Class III Owners.**

(a) Each Class III Owner shall be required to construct, maintain, repair, reconstruct, and insure all improvements (including the Residence and landscaping) on such Owner's lot, and the Association shall have no responsibility with respect thereto.

(b) The Association shall be responsible for the repair, maintenance and rebuilding of recreational facilities within Increment 5G.

(c) Class III Owners shall have the same voting rights and the same right to use the Common Areas and Common Property (as defined in this Restated CC&Rs) as other Members of the Association.

(d) Residences constructed on lots in Increment 5G shall conform to the Class III Design and Use Criteria established by the Design Committee.

(e) Access to Increment 5G may be limited by an automated gate or similar means. Access to any recreational facilities located in Increment 5G paid for and maintained at the expense of Class III Owners shall be limited to the owners in Increment 5G, their Family members, tenants and guests. The Developer of Increment 5G or Class III Owners shall pay the cost of installing any such gate or recreational facilities. The cost of maintaining said gate and recreational facilities will be assessed to Class III Owners by the Association.

(f) After all of the Lots in Increment 5G have been sold, the Class III Owners by majority vote may establish a Class III Owners Group to work with the Board on matters directly affecting the Class III Area. Before adopting any rule or regulation applicable only to Class III Owners or approving any assessment other than the Annual Assessment applicable just to Class III Owners, the Board shall provide an opportunity for Class III Owners or the Class III Owners Group to comment on the proposed rule or assessment.

**Section 3.09. Design Committee.**

(a) The Remaining Land will be developed in such a way that the exterior architecture, colors, quality and scale of the buildings and other improvements and landscaping are compatible with the improvements and landscaping of the Class I Land. To this end, a committee will be formed to which SCIC, any active Developer of an Increment in the Remaining Land, and the Association shall each have the right to name a member- (the "Design Committee.") The Design Committee shall establish Design and Use Criteria for Class III Residences (the "Class III Design Criteria") prior to the sale of the first Class III Lot, which criteria can be amended from time to time by the Design Committee.

(b) The Design Committee will review and approve all plans and construction scheduling for the Remaining Land before construction commences, including construction on the lots in Increments 5B through 5G, to determine whether the proposed construction conforms with the Class III Design Criteria and any applicable provisions of this Restated CC&Rs. The Design Committee will not be concerned with the design of the interiors of Condominiums or

Residences. The approval of the Design Committee will not in any way be an approval of the soundness of the proposed structure, any engineering aspect of the proposed structure, or the conformance of the proposed structure with any law or regulation. The Design Committee may employ an independent inspector or other building or construction professional to verify that construction is proceeding in accordance with approved plans. The Design Committee shall be fully protected in relying upon the opinions of the inspector or other building or construction professional. Any cost incurred by the Association in connection with the Design Committee shall be assessed to Class II or Class III Homeowners as appropriate. After the completion of Increments 5B through 5F, if SCIC or the Developer advises the Design Committee that it no longer will participate in the Design Committee, a replacement member shall be elected to participate by the Class III Owners from among the Class III Owners. Upon completion of Increments 5B through 5G, including the construction of Residences on the lots in Increment 5G, the Design Committee shall be disbanded, and Increments 5B through 5G shall fall under the jurisdiction of the Architectural Committee. At any time, by unanimous vote of the members of the Design Committee, the Design Committee can be disbanded and its responsibilities turned over to the Architectural Committee.

(c) The Design Committee shall have the right to establish rules for its proceedings. The Design Committee shall act by the decision of a majority of its members.

(d) Before commencing construction of improvements on the Remaining Land, the Developer shall submit the plans including a construction schedule ("Plans") for such Increment to the Design Committee for its review and approval. The Plans shall include (i) a site plan showing the location of all improvements and common areas, including without limitation, buildings, structures, streets (which shall tie in with the Project's street system), parking areas, access ways, fences, walls, signs, and landscaped areas; (ii) exterior elevations and architectural renderings of the buildings and other improvements; (iii) the architectural design, exterior color and materials to be used in finishing the exteriors and roofs of all buildings and structures; and (iv) utility and drainage plans showing the location of utilities and drainage systems in the Increment and, if applicable, the tie-ins of such systems with Project's systems.

(e) The Developer shall deliver to the Design Committee for its review two (2) complete copies of the Plans. If the Plans so delivered are satisfactory to and approved by the Design Committee, such approval shall be endorsed on the Plans within thirty (30) days from the Design Committee's receipt thereof, one set thereof being retained by the Design Committee and the other being delivered to the Developer. If the Design Committee does not approve the Plans, the Design Committee shall within said thirty (30) day period notify Developer in writing, stating with reasonable specificity its reasons for not approving the same. The failure of the Design Committee to so approve or disapprove the Plans within said thirty (30) day period shall be deemed approval thereof by the Design Committee.

(f) The Design Committee's review and approval of the Plans shall be for the purpose of ensuring that the exterior architecture, colors, quality and scale of the buildings and other improvements and landscaping are compatible with the existing Project and that the utility and drainage systems and roads are adequately sized and designed to serve the new Phase and will be compatible with the systems in the existing Project. By reviewing and approving the Plans, the members of the Design Committee, SCIC and the Association assume no liability for

the accuracy or sufficiency thereof, or for their conformity with building or safety codes, or for any defects in the Plans or any improvements constructed by the Developer. The Developer shall be required to hold SCIC, the Association and anyone designated by them to serve on the Design Committee, harmless from any liability in any way connected with the Design Committee.

(g) In constructing the improvements in an Increment, the Developer shall be required not to deviate from the approved Plan in any material respect without first obtaining the Design Committee's written approval. If the Developer desires to amend the Plans, Developer shall be required to deliver to the Design Committee for its consideration two (2) complete copies of the proposed amendment. The proposed amendment shall be reviewed and approved or disapproved by the Design Committee as provided in subparagraph (a), above, with respect to the original Plans, except that the thirty (30) day time limit shall be reduced to fifteen (15) days.

(h) The Developer shall be required to commence construction within one year of Plan approval or the approval is void. The Developer shall be required, once construction of any improvements on an Increment is commenced, to prosecute with reasonable diligence to completion. Construction must be completed within two years of Plan approval. Unless otherwise specified herein, the Developer shall bear the sole cost and expense of all such construction and shall indemnify and hold harmless Association from any cost, expense or liability arising out of or resulting from such construction. The Developer shall pay all costs for the procurement of any necessary permits or licenses in connection with the improvements.

#### ARTICLE IV

##### ARCHITECTURAL REVIEW COMMITTEE

**Section 4.01. Members of Committee.** The Architectural Review Committee, sometimes referred to in this Restated CC&Rs as the "Architectural Committee," shall consist of three (3) members. The Board shall name one member as Chairman. The Board shall have the power to appoint and remove all of the members of the Architectural Committee. Committee members appointed by the Board shall be from the Membership of the Association. Board members may also serve as committee members.

**Section 4.02. Review of Plan and Specifications.** The Architectural Committee shall have jurisdiction over Phases 1 through 4 and will assume jurisdiction over Increments 5F through 5G as provided in Section 3.09. The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Restated CC&Rs and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. No construction, alteration, removal, relocation, repainting, demolishing, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Project shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Committee and approved in writing by the Architectural Committee; provided, however, that any Improvement may be repainted without the Architectural Committee's approval, so long as the Improvement is repainted the identical

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color which it was last painted. Without limiting the generality of this Article IV, the provisions of this Article IV apply to the construction, installation, alteration and modification of solar energy equipment, subject to the provisions of California Civil Code Section 714. The Owner submitting the plans ("Applicant") shall obtain a written, dated receipt for the plans and specifications from Association. Until changed by the Board, the address for the submission of such plans and specifications shall be the business office of the Association located at the Project. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Project as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) upon the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) upon the Applicant's agreement to reimburse the Association for the cost of maintenance, or (6) upon the Applicant's agreement to complete the proposed work within a stated period of time, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval. Decisions of the Architectural Committee and the reasons for the decisions shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any application submitted pursuant to this Section 4.02 shall be deemed approved unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the Architectural Committee of all required materials. The Applicant shall meet any review or permit requirements of the City of Avalon or the County of Los Angeles prior to making any alterations or Improvements permitted hereunder.

No addition, alteration or replacement, or any series of related additions, alterations or replacements carried on as part of a single project, which addition, alteration or replacement, or

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series of related additions, alterations or replacements, cost Ten Thousand Dollars (\$10,000) or more shall be commenced or maintained until the plans and specifications therefor submitted to the Committee as required above have been approved by Master Lessor. Two copies of the plans and specifications shall be submitted by the Applicant to Association for forwarding to the Master Lessor. Association shall notify the Applicant of Master Lessor's approval or disapproval of the plans and specifications promptly upon receipt of such approval or disapproval by Association. Neither the Association, the Architectural Committee nor its members shall be responsible to the Applicant for any delay in the processing of the plans and specifications on the part of Master Lessor. The Applicant shall send written notice to Association for forwarding to Master Lessor of any substantial repair to be undertaken even if such repair does not require Master Lessor's prior approval hereunder.

**Section 4.03. Meetings of the Architectural Committee.** The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may, from time to time by resolution unanimously adopted in writing, designate an Architectural Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to Section 4.08. In the absence of such designation, the vote of a majority of the Architectural Committee or the written consent of a majority of the Architectural Committee taken without a meeting shall constitute an act of the Committee.

**Section 4.04. No Waiver of Future Approvals.** The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent.

**Section 4.05. Compensation of Members.** The members of the Architectural Committee shall receive no compensation for services rendered other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**Section 4.06. Correction of Defects.** Inspection of work and correction of defects therein shall proceed as follows:

(a) The Architectural Committee or its duly authorized representative may at any time inspect any Improvement for which approval of plans is required under this Article IV. However, the Architectural Committee's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the respective Owner has given written notice of its completion to the Architectural Committee. The Architectural Committee's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved by the Architectural Committee. If, as a result of such inspection, the Architectural Committee finds that the Improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Committee, it shall notify the Owner in writing of failure to

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comply with this Article IV within sixty (60) days from the inspection, specifying the particulars of noncompliance. The Architectural Committee shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy the noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing as provided in the Bylaws, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board at its option, may record a Notice of Non-Compliance and may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Restated CC&Rs. The right of the Association to remove a non-complying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies that the Association may have at law, in equity or in this Restated CC&Rs.

(c) If, for any reason the Architectural Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans.

**Section 4.07. Scope of Review.** The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, on the basis of aesthetic considerations, consistency with the Restated CC&Rs, and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IV, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

**Section 4.08. Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Restated CC&Rs, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the Architectural Committee and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Restated CC&Rs shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Restated CC&Rs for any purpose except as to

the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Residence.

## **ARTICLE V**

### **ASSOCIATION OPERATING FUND AND ASSESSMENTS**

**Section 5.01. Personal Obligation of Assessments.** Each Owner, by acceptance of a Condominium Sublease or deed thereto, whether or not it shall be so expressed therein, and each Single Family Residential Lot Owner by purchasing said lot is deemed to covenant and agree to pay to the Association all Annual Assessments for Common Expenses and all applicable Special Assessments, Reconstruction Assessments, and Capital Improvement Assessments. Except as provided in this Section 5.01, all such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Person who was the Owner of the Condominium or Single Family Residential Lot at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of the Condominium or Single Family Residential Lot or by an offer to waive use of the Common Property. The personal obligation for delinquent assessments shall not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser. No Class of Owners shall be assessed or required to pay for anything or any expense that does not benefit the Class.

**Section 5.02. Accounts.** The Board of Directors shall establish no fewer than two (2) separate Funds, an Operating Fund and a Reserve Fund, into which shall be deposited monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Restated CC&Rs. The funds may be established as checking or trust accounts at a banking or savings institution. The Operating Fund shall be used for the payment of current Common Expenses of the Association. The Reserve Fund shall be for funds set aside for Capital Improvements, replacements, painting and repairs of the Common Property (which cannot normally be expected to occur on an annual or more frequent basis.) From time to time, the Association may establish addition funds for specific purposes as designated in the name of the fund, i.e., Construction Defect Fund. To qualify for higher returns on accounts held at banking or savings institutions the Board of Directors may commingle any amounts deposited into any of the funds with one another, provided that the integrity of the funds shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each fund separately. Nothing contained herein shall limit, preclude or impair the establishment of additional checking or trust accounts by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Restated CC&Rs and separately accounted for.

**Section 5.03. Division of the Reserve Fund.** Immediately prior to the annexation of Increment 5B, the Reserve Fund shall be divided by the Board of Directors into four distinct accounts as follows:

- (1) An account for Expenses Benefitting All Homeowners;

- (2) An account for Expenses Benefitting only Class I Homeowners;
- (3) An account for Expenses Benefitting only Class II Homeowners; and
- (4) An account for Expenses Benefitting only Class III Homeowners.

Assessments for reserves received thereafter shall be credited to the appropriate Reserve Fund account by the Board of Directors and expenditures charged to the Reserve Fund shall be charged by the Board of Directors against the appropriate account. The Association's outside accountant will review the application of Reserve Fund assessments and expenditures to the four accounts as part of his annual review. If the accountant determines that funds received have not been correctly credited or that expenditures have not been correctly charged, appropriate adjustments will be made.

**Section 5.04. Purpose of Assessments.** The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Condominiums and Single Family Residential Lots for the operation, replacement, improvement and maintenance of the Project, and to discharge any other obligations of the Association under this Restated CC&Rs. All amounts deposited into the Operating and Reserve Funds must be used solely for the common benefit of the Owners for purposes authorized by this Restated CC&Rs. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors only for the respective purposes specified in this Article V. Nothing in this Restated CC&Rs shall be construed in such a way as to prohibit the Association from using any assessments to abate any annoyance or nuisance emanating from outside the boundaries of the Project negatively impacting the Project or Owners. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

**Section 5.05. Determination of the Annual Assessment for Each Class.** The Board of Directors shall determine the Annual Assessment for each Class to be paid monthly as follows:

- (1) Class I Owners
  - Pro rata share of the annual budget expenses Benefitting all Owners;
  - Pro rata share of annual budget expenses Benefitting only Class I Owners;
  - Pro rata share of the Reserve Fund contribution for future expenditures Benefitting all Owners;
  - Pro rata share of the Reserve Fund contribution for future expenditures Benefitting only Class I Owners; and
  - Master Land Loan Monthly Assessment as applicable.

- (2) Class II Owners
- Pro rata share of the annual budget expenses Benefiting all Owners;
  - Pro rata share of annual budget expenses Benefiting only Class II Owners;
  - Pro rata share of the reserve fund contribution for future expenditures Benefiting all Owners;
  - Pro rata share of the reserve fund contribution for future expenditures Benefiting only the Class II Owners, and
  - Phase V Land Loan Monthly Assessment if applicable.
- (3) Class III Owners
- Pro rata share of the annual budget expenses Benefiting all Owners;
  - Pro rata share of annual budget expenses Benefiting only Class III Owners;
  - Pro rata share of the reserve fund contribution for future expenditures Benefiting all Owners; and
  - Pro rata share of the reserve fund contribution for future expenditures Benefiting only the Class III Owners.

As part of his annual review, the Association's outside accountant will determine whether expenditures have been properly assessed in accordance with the above. To the extent said accountant determines that expenditures have not been properly assessed, appropriate adjustments will be made by the Board in future assessments.

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**Section 5.06. Limitations on Annual Assessment Increases.** Subject to Section 5.06(d) below, the Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined pursuant to Section 5.06(b) below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association.

**(a) Maximum Authorized Annual Assessment for Subsequent Fiscal Years.** The Maximum Authorized Annual Assessment in any Fiscal Year shall equal one hundred twenty percent (120%) of twelve (12) times the monthly installment of the Annual Assessment levied during the last month of the immediately preceding Fiscal Year.

**(b) Supplemental Annual Assessments.** If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in an amount less than the Maximum Authorized Annual Assessment, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all expenses for the Project for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the then Maximum Authorized Annual Assessment, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium.

**(c) Automatic Assessment Increases.** Notwithstanding any other provisions of this Section 5.06, upon commencement of assessments in any later Increment of

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the Project, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in such later Increment in accordance with prudent property management practices.

**Section 5.07. Commencement and Collection of Annual Assessments.** The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Condominium or Single Family Residential Lot, as provided herein, by majority vote of the Board. The initial Annual Assessment shall begin on all Condominiums or Single Family Residential Lots in an Increment (including unsold Condominiums or Lots therein owned by a Developer ) on the first day of the first calendar month following the annexation of the Increment. Annual Assessments for fractions of any month involved shall be prorated. The Board shall fix the amount of the Annual Assessment against each Condominium or Single Family Residential Lot at least thirty (30) days in advance of each Annual Assessment period. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Project, any amounts remaining in any fund shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members. Each Member shall pay to the Association his Annual Assessment in installments at such frequency and in such amounts as established by the Board. Each Annual Assessment may be paid by the Member to the Association in one check.

**Section 5.08. Capital Improvement Assessments.** Should the Board of Directors determine the need for a Capital Improvement or other such addition to the project, the cost of which in the aggregate exceeds five percent (5%) of the Budgeted gross expenses of the Association for the then current Fiscal Year, then the vote or written consent of Members representing at least a majority of the voting power of the Association shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments may be levied by the Board without the consent of the Members if the aggregate of such expenditures in each Fiscal Year does not exceed five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year.

**Section 5.09. Delinquency and Acceleration.** Any installment of an assessment provided for in this Restated CC&Rs shall become delinquent if not paid within thirty (30) days of the due date as established by the Board of Directors of the Association. The Board shall be authorized to adopt a system pursuant to which any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of up to twenty percent (20%) per annum, but in no event more than the maximum rate permitted by law. In addition, the Board of Directors may require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1725 to compensate the Association for increased bookkeeping, billing and other administrative costs. No such late charge shall exceed the maximum amount allowable by law. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail a notice to the Owner and to each first Mortgagee of a Condominium or Single Family Residential Lot that has requested a copy of the

notice. Such notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then current Fiscal Year and sale of the Condominium or Single Family Residential Lot. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installments of an assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of such assessment for the then current Fiscal Year, attributable to that Owner and his Condominium or Single Family Residential Lot, to be immediately due and payable without further demand and may enforce the collection of the full assessment for such Fiscal Year and all charges thereon in any manner authorized by law and this Restated CC&Rs.

**Section 5.10. Creation and Release of Lien.** All sums other than Special Assessments assessed in accordance with the provisions of this Restated CC&Rs shall constitute a lien on the respective Condominium or Single Family Residential Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or Deed of Trust with first priority or seniority over other Mortgages or Deeds of Trust made in good faith and for value and recorded prior to the date on which the lien became effective. Notwithstanding the foregoing, any assessment lien provided for hereunder shall be prior and superior to any Declaration of Homestead recorded after the recordation of this Restated CC&Rs. The lien shall become effective upon recordation by the Board, its authorized agent of a Notice of Assessment ("Notice of Lien") securing the payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof, levied by the Association against any Condominium or Single Family Residential Lot Owner as provided in Section 1356 of the California Civil Code. The Notice of Lien shall state (i) the amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium or Single Family Residential Lot against which the same has been assessed, (iv) the name and address of the Association, and (v) the name of the Owner thereof. The Notice of Lien shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association. The lien shall relate only to the individual Condominium or Single Family Residential Lot against which the assessment was levied and not to the Project as a whole. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable Owner a reasonable charge for the preparation and recordation of the Notice of Release before recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

**Section 5.11. Enforcement of Liens.** It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Restated CC&Rs by one or more of the

alternative means of relief afforded by this Restated CC&Rs. The lien on a Condominium or Single Family Residential Lot may be enforced by sale of the Condominium or Single Family Residential Lot by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was Recorded; provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby, and subject to the provisions of Section 5.09 if the Board accelerates the due date of any assessment installments. The Association, through its agents, shall have the power to bid on the Condominium or Single Family Residential Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Condominium or Single Family Residential Lot, and the defaulting Owner shall be required to pay the reasonable rental value for such Condominium or Single Family Residential Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

**Section 5.12. Priority of Assessment Lien.** The lien of the assessments, including interest and costs of collection (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium or Single Family Residential Lot. Sale or transfer of any Condominium or Single Family Residential Lot shall not affect the assessment lien. However, the sale or transfer of any Condominium or Single Family Residential Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium or Single Family Residential Lot from liens for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium or Single Family Residential Lot obtains title, such acquirer of title, his successors, and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium or Single Family Residential Lot which became due prior to the acquisition of title to such Condominium or Single Family Residential Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums or Single Family Residential Lot in the Property including such acquirer, his successors and assigns.

## **ARTICLE VI**

### **PROJECT EASEMENTS AND RIGHTS OF ENTRY**

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Doc. No. 84 1262603 as amended 84 1467960, 85 348589 and 86 491811 and restated 09/30/04 recorded as Doc. No. 05 2391948

#### **Section 6.01. Easements.**

(a) **Access.** The Owners have reciprocal, non-exclusive easements for access, ingress and egress over all of the Common Property, including any private streets or driveways currently existing in the Project or subsequently added to it, which easements have been conveyed to Owners and to the Association for so long -as the Association owns any interest in the Project. Subject to the provisions of this Restated CC&Rs governing use and enjoyment thereof, the easements may be used by all Owners and their guests, tenants and invitees residing on or temporarily visiting the Project, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Condominium or Single Family Residential Lot in the Project.

(b) **Maintenance and Repair.** The Board of Directors and all agents, officers and employees of the Association, have nonexclusive easements over the Common Areas as necessary to maintain and repair the Common Areas, and to perform all other tasks in accordance with the provisions of this Restated CC&Rs. Such easements over the Common Areas shall be appurtenant to, binding upon and shall pass with the title to every Condominium or Single Family Residential Lot conveyed.

(c) **Common Facilities.** The Owners and the Association have easements over that portion of Parcel 2 of Parcel Map No. 14686, as shown on a map filed on April 7, 1982, in Book 151, Pages 3 to 12, inclusive, of Parcel Maps, County of Los Angeles, California, more particularly described on Exhibit "H" attached to the Original Declaration. Such easements may be used for the purposes of access, ingress, egress, maintenance, repair, use and enjoyment of the Common Facilities constructed or to be constructed thereon. The portion of said Parcel 2 over which the Owners and the Association shall have an easement as provided in this Section 6.01(c) shall be deemed part of the Common Facilities.

(d) **Utility Easements.** The Association has the right to grant additional easements and rights-of-way over the Project to utility companies and public agencies, as necessary, for the proper development and disposal of the Project.

(e) **Encroachments.** The Association and Owners of contiguous Residences shall have a reciprocal easement appurtenant to each of the Residences over the Residences and the Common Property for the purpose of (1) accommodating any existing encroachment of any wall of any Improvement, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Improvements or any other portion of the Project housing their respective Condominiums or Residences. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Property are specifically reserved for the benefit of the Owners. Association expressly reserves for the benefit of the Common Areas, and for the benefit of the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across, and upon the Common Areas. The foregoing easements shall not unreasonably interfere with each Owner's use and enjoyment of adjoining Residences.

**Section 6.02. Rights of Entry.** The Board of Directors shall have limited right of entry in and upon the Common Areas and the interior of all Condominiums for the purpose of inspecting the Project and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Restated CC&Rs. However, such entry upon the interior of a Condominium shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days prior written notice to the Owner of such Condominium and after authorization of two-thirds (2/3rds) of the Board of Directors. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners. Nothing in this Article VI shall in any manner limit the right of the Owner to exclusive occupancy and control over the interior of his Condominium. However an Owner shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, such as in case of any emergency originating in or threatening his Condominium, whether the Owner is present or not. Any damage caused to a Condominium by such entry by the Board of Directors or by any person authorized by the Board of Directors shall be repaired by the Board as a Common Expense of the Association. Furthermore, an Owner shall permit other Owners, or their representatives, to enter his Residence for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Residence, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Owner whose Condominium is to be entered; and provided further, that the entered Condominium is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Any damage caused to a Condominium by such entry by an Owner or his representative shall be repaired by such Owner. Upon receipt of reasonable notice from the Association (which shall in no event be less than seven (7) days, each Owner shall vacate his Condominium in order to accommodate efforts by the Association to eradicate the infestation of wood destroying or other pests and organisms from the Common Property or to perform any other maintenance or repairs pursuant to the Restated CC&Rs. The Board shall have the right of entry to the Condominiums and the right to remove Owners from their Condominiums, as necessary, to accomplish its duties as provided herein. The cost of eradicating any such infestation or of performing any such maintenance or repair shall be a Common Expense of the Association; however, each Owner shall bear his own costs of temporary relocation. In order to facilitate entry of a Unit as provided herein, each Owner shall provide the Association with a key to the Unit if the Unit cannot be opened by the Master Key maintained by the Association.

**Section 6.03. Utilities and Road Agreement.** Master Lessor and its predecessors in interest as lessee under the Master Lease executed a Utilities and Road Agreement dated June 29, 1971, and an Amendment and Assumption of Road and Utility Agreement dated September 14, 1978, (collectively referred to herein as the "Road Agreement"), copies of which are attached to the Original Declaration as Exhibit "D" and incorporated herein by this reference. Under the Road Agreement, the lessee under the Master Lease has the obligation to maintain, repair and replace certain improvements, as follows:

(a) The existing road lying between the site of the former parking lot of the St. Catherine Hotel in Descanso Bay and the Property (Paragraph 5(b) of the Road Agreement).

(b) The Access Road (Paragraph 5(c) of the Road Agreement).

(c) The Sewer Line and Sewer Line Extension (Paragraph 6(c) of the Road Agreement).

Without limiting the generality of the foregoing, the Association shall be also responsible for the maintenance, repair and replacement, as necessary, of the sewer main running from the Project to a point at which such sewer main enters the St. Catherine's Way public right-of-way. The Association shall assume all of the obligations of the lessee under the Master Lease for operation, maintenance, repair, and replacement of the road and utility improvements described in the Road Agreement, including without limitation those listed in this Section 6.03, as such improvements may be relocated by Master Lessor under Paragraph 8 of the Road Agreement. All costs and expenses incurred by the Association for the operation, maintenance, repair, and replacement of such improvements shall constitute a portion of the Common Expenses. In no event shall the Association or any of its Members have any obligation whatsoever with respect to the construction and installation of any such improvements under the Road Agreement.

**Section 6.04. Public Restroom Facilities.** Master Lessor and the California Coastal Commission executed an Agreement Regarding Public Restroom Facilities, recorded as Instrument No. 81-489929, in Official Records of Orange County, California ("Shoreline Facilities Agreement"), a copy of which is attached to the Original Declaration as Exhibit "F" and incorporated herein by this reference. Under the Shoreline Facilities Agreement Master Lessor is obligated to provide for the maintenance of the public restroom facilities described therein. Notwithstanding anything else in this Restated CC&Rs to the contrary, the Association shall assume responsibility for operation, maintenance, repair and replacement of the public restroom facilities on the Property as described in the Shoreline Facilities Agreement. All costs and expenses incurred by the Association for the operation, maintenance, repair, and replacement of such improvements shall constitute a portion of the Common Expenses.

**Section 6.05. Easements for Public; Service Use.** The Association hereby reserves and covenants for itself and all future Owners within the Properties that there shall be easements for public services of the City of Avalon and the County of Los Angeles, including but not limited to, the right of the police, fire and other emergency services, to enter upon any part of the Common Areas in the course of their official duties.

**Section 6.06. Public Access.** ~~The Association reserves easements for the purpose of accommodating the construction of a public walkway to provide pedestrian access at the water's edge from Descanso Bay to the boundary of the Project if any such walkway should be constructed in the future. No such walkway shall unreasonably interfere with Owners' use and enjoyment of the Project or any facilities located therein. The Association shall have no responsibility for construction, maintenance, repair or replacement of any such walkway.~~ Neither the Association nor any Owner shall interfere with access to and use of the beach areas in the Project by the general public pursuant to any access right of the general public as may exist from time to time.

## ARTICLE VII

### SCIC'S RIGHTS AND RESERVATIONS

Nothing in the Restrictions shall limit, and no Owner or the Association shall do anything to interfere with, the right of SCIC, its assigns or its successor in title to subdivide or re-subdivide the Remaining Land, or to complete Improvements to and on the Common Property or any portion of the Remaining Land, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as SCIC, its assigns or its successor in title deems advisable in the course of development of the Remaining Land. The rights of SCIC, its assigns and its successor in title hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, flags and sales offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of Condominiums, Single Family Residence Lots and residences constructed on the Remaining Land, ~~Single Family Residential Lots or Residences constructed thereon~~ by sale, resale, lease or otherwise. Each Owner by accepting a ~~Condominium Sublease or~~ a deed to a Condominium, ~~or assignment thereof,~~ or by purchasing a residence or Single Family Residential Lot hereby acknowledges that the activities of SCIC, its assigns or its successor in title may temporarily or permanently impair the view of a Class II or Class III -Owner and may constitute an inconvenience or nuisance to all of the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Restated CC&Rs shall not limit the right of SCIC, its assigns or its successor in title at any time prior to acquisition of title to a Condominium or residence in the Class II Area or a Single Family Residential Lot by a purchaser to establish on the Remaining Land additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Remaining Land. SCIC, its assigns or its successor in title may use any residence Condominium on the Class II Land or Single Family Residence owned by SCIC, its assigns or its successor in title as model home complexes or real estate sales or leasing offices. SCIC, its assigns or its successor in title need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by SCIC, its assigns or its successor in title on any portion of the Remaining Land by SCIC, its assigns or its successor in title. The rights of SCIC, its assigns or its successor in title hereunder and elsewhere in these Restrictions may be assigned by SCIC, its assigns or its successor in title to any successor in interest to any portion of the Remaining Land by a recorded written assignment. Notwithstanding any other provision of this Restated CC&Rs, the prior written approval of SCIC, its assigns or its successor in title to the Remaining Land will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of his acquisition of his Condominium, residence or Single Family Residential Lot, an irrevocable, special power of attorney to SCIC, its assigns or its successor in title to execute and record all documents and maps necessary to allow SCIC, its assigns or its successor in title to exercise its rights under this Article. SCIC, its assigns or its successor in title shall be entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use, enjoyment in order to show the Project to its prospective purchasers and dispose of the Class II Condominiums and Class III Single Family Residential Lots as provided herein. SCIC, its assigns or its successor in title shall also be entitled to the nonexclusive use of any portions of the Project which comprise private streets, drives and walkways for the purpose of ingress, egress and

accommodating vehicular and pedestrian traffic to and from the Remaining Land. The use of the Common Property by SCIC, its assigns or its successor in title shall not unreasonably interfere with the use thereof by the other Members. Nothing contained herein shall limit SCIC, its assigns or its successor in title from entering into any agreement with the Association with regard to the development of the Remaining Land. Any such agreement shall take precedence over any provision contained herein.

## **ARTICLE VIII**

### **RESIDENCE AND USE RESTRICTIONS**

All of the Project shall be held, used and enjoyed subject to the following limitations and restrictions set forth in this Restated CC&Rs.

**Section 8.01. Single Family Residences.** Residential Elements of the Condominiums and the Single Family Residences shall be used exclusively for residential purposes. Owners may rent Condominiums and Single Family Residences provided they do so in compliance with the Rules and Regulations of the Association and all applicable laws. The right to rent may be restricted or terminated by the Board of Directors if the Rules and Regulations regarding renting are repeatedly violated by an Owner or renters occupying a Condominium or Residence.

**Section 8.02. Vehicular Restrictions.** No privately owned automobiles or trucks shall be allowed on the Project except for Association purposes, public transportation, maintenance vehicles authorized by the Association or with the permission of the Association. No vehicles of any type (including golf carts) shall park within the roadways in the Project in violation of the Rules and Regulations or applicable law. Public transportation vehicles, such as taxis and trams, shall be allowed at all times within the Project provided they comply with speed limits, stop signs and other traffic rules established by the Association. By acquiring a Condominium or Single Family Residential Lot, each Owner acknowledges and agrees that (a) the Project has not been constructed to accommodate ownership or use by Owners of automobiles or trucks on the Project, (b) only golf carts or comparably sized vehicles complying with applicable City of Avalon vehicle ordinances will be used on the Project by Owners notwithstanding any permit issued by the cognizant governmental agency or any change in the local ordinance which would authorize ownership and use of other types of vehicles without a permit, and (c) only such commercial or maintenance vehicles serving the Project with internal combustion engines as the Association reasonably determines by regulation to be necessary or appropriate shall be permitted in the Project. No helicopter operations shall be permitted on the Property except in case of emergency or with the written permission of Master Lessor and Association. The Board shall determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions herein. Without in any way limiting the obligations of the Owners as elsewhere herein described, the Association, or agency representing the Association, shall have the right, and shall be obligated to enforce all parking restrictions herein set forth and to remove any vehicles in violation thereof in accordance with the provisions of Section 22658 of the California Vehicle Code, or other applicable laws, codes, and statutes. If, for any reason, the Association fails to enforce the parking restrictions, the City of Avalon or County of Los Angeles, as applicable, shall have the right, but not the duty, to enforce such parking restrictions

in accordance with the California Vehicle Code and all other applicable laws, codes, statutes and local ordinances.

**Section 8.03. Parking Restrictions.** Each Class I and Class II Owner shall be entitled to park one golf cart or similarly sized vehicle in a parking space designated by the Association provided that the size of the vehicle does not unreasonably interfere with access to any vehicle legally parked along side. Each Class III Owner shall be entitled to park one golf cart or similarly sized vehicle in a parking space provided on the Single Family Residential Lot. To the extent that the Association has additional parking available for such vehicles, the Association may rent one additional space to an Owner on a first-come, first-served basis. All motorbikes, motorcycles, bicycles or similar means of transportation shall be parked only in spaces or areas designated by the Association. To the extent the Association has parking available for full size vehicles, it may rent one such parking space to an Owner on a first-come, first-served basis. Boats or watercraft will only be parked or stored in designated areas on the Project. The Association may levy a reasonable charge for parking or storing boats or watercraft.

**Section 8.04. Nuisances.** No noxious or offensive activities shall be carried on upon the Project or on any public street abutting or visible from the Project. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, shall be placed or used in any such Residence. No loud noises, noxious odors, noisy vehicles, large power equipment or large power tools, or items which may unreasonably interfere with television or radio reception of any Owner in the Project, shall be located, used or placed on any portion of the Project or on any public street abutting or visible from the Project, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board of Directors of the Association shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept upon the Project or on any public street abutting or visible from the Project which may increase the rate of insurance on Condominiums, Single Family Residences or on the Project, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners. No Person shall commit or permit any nuisance on the Project. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Residence. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children residing in or visiting in Condominium or Single Family Residence and other family members or persons residing in or visiting his Condominium or Single Family Residence. Any damage to the Common Property, personal property of the Association, or property of another Owner caused by such children or other family members, shall be repaired at the sole expense of the Owner of the Condominium or Single Family Residence where such children or other family members or persons are residing or visiting.

**Section 8.05. Signs.** No sign, poster, display or other advertising device of any character shall be erected or maintained anywhere on the Project or on any public street abutting or visible from the Project, or shown or displayed from any Residence, without the prior written consent of the Architectural Committee. The Board of Directors may erect within the Common Property a master directory of Condominiums and Single Family Residential Lots that are for

sale or for lease. Address identification signs shall be maintained by the Association for Condominiums constructed on Class I and Class II Land. Address signs as approved by the Design Committee will be installed in the Class III Area. This Section shall not apply to any signs located on the Remaining Land used by SCIC, its assigns or successors in title or its agencies in connection with the construction and sale of Condominiums or Single Family Residential Lots. This Section shall also not apply to traffic and parking control signs installed by the Board or with the consent of the Board. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign that is not in conformance with any ordinance of the City of Avalon or County of Los Angeles. Notwithstanding the provisions contained herein, only those signs permitted by Section 1353.6 of the California Civil Code shall be permitted.

**Section 8.06. Antennae.** No radio station or short-wave operators of any kind shall operate from any Condominium or Single Family Residential Lot or any other portion of the Project unless approved by the Architectural Committee. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, or other antenna of any type shall be erected or maintained anywhere in the Project without the prior approval of the Association. To the extent an Owner has a right to maintain an antenna by law or regulation, the antenna shall be located as reasonably directed by the Association in order to minimize the visual impact of such antenna or any interference with the view of any Owner.

**Section 8.07. Inside and Outside Installations.** No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on any Residence, except as may be installed by, or with the prior consent of, the Architectural Committee. No balcony or patio covers, wiring, or installation of air conditioning, water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approval of the Architectural Committee is secured. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to the Rules and Regulations. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Condominium or Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Condominium or in, on or to the Common Areas which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Condominiums that may diminish the effectiveness of the sound control engineering within the buildings in the Project. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

**Section 8.08. Animal Regulations.** No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any Residence except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Restated CC&Rs, "unreasonable quantities" shall ordinarily mean more than one pet per Residence; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal that constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure, an enclosed balcony or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by an Owner or by members of his family, his tenants or his guests. It shall be the duty and responsibility of each such Owner to clean up after such animals that have deposited droppings or otherwise used any portion of the Common Property or on any public street abutting or visible from the Property.

**Section 8.09. View Obstructions.** No vegetation or other obstruction shall be planted or maintained upon any patio or balcony in such location or of such height as to unreasonably obstruct the view from any other Residence in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Residence, the dispute shall be submitted to the Architectural Committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed, or otherwise altered to the satisfaction of the Architectural Committee, by the Owner of the Residence upon which the obstruction is located. Any item or vegetation maintained upon any patio or balcony, which item or vegetation is exposed to the view of any owner, shall be removed or otherwise altered to the satisfaction of the Architectural Committee, if such Committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Restated CC&Rs. The Architectural Committee shall ensure that the vegetation on the Common Property maintained by the Association is cut frequently, so that the view of any Owner is not unreasonably obstructed. No activity or improvement on the Project shall be carried out or constructed at or to a level or height wholly or in part higher than the natural ridgeline dividing Descanso Canyon from the Property. Without limiting the generality of the foregoing, no structure shall be built on the Property so as to be visible to individuals in Descanso Canyon.

**Section 8.10. Business or Commercial Activity.** No business or commercial activity shall be maintained or conducted on the Project, except that (a) SCIC, its assigns or its successor in title may maintain sales and leasing offices as provided in Article VII, and (b) the Association shall be permitted to sell, or grant concessions to sell at retail food, beverages, clothing, boating equipment, and sporting goods or other items customarily sold in connection with a resort development subject to such approval of Master Lessor as may be required under the Master Lease. Notwithstanding the foregoing, professional and administrative occupations may be carried on within the Condominiums and Single Family Residences, so long as there exists no external evidence of them, and provided further that all of the applicable requirements of the City

of Avalon and County of Los Angeles are satisfied. No Owner shall use his Condominium or Single Family Residence in such a manner as to interfere unreasonably with the business of SCIC, its assigns or successor in title in selling Condominiums and Single Family Residences in the Project, as set forth in Article VII of this Restated CC&Rs.

**Section 8.11. Rubbish Removal.** Trash, garbage, or other waste shall be disposed of by residents of the Project only by depositing the same into trash containers designated for such use by the Board of Directors. No portion of the Project shall be used for the storage of building materials, refuse or any other materials, except that building materials may be kept on any balcony or patio temporarily during construction which has been previously approved by the Architectural Committee. No clothing, household fabrics or other unsightly articles shall be hung, dried or aired on any portion of the Project, including the interior of any Residence, so as to be visible from other Residences or the street. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor. The cost of trash collection and removal and trash bin rentals shall be borne by the Association and shall constitute a portion of the Common Expenses.

**Section 8.12. Further Subdivision.** Subject to Article VII, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each mortgage owned), or Owners representing seventy-five percent (75%) of the voting power of the Association residing in Owners other than Declarant have given their prior written approval, and all applicable laws and regulations have been complied with, no Owner shall physically or legally subdivide his Condominium in any manner, including without limitation any division of his Condominium or his Condominium into time-share estates or time-share uses; however, the right of an Owner to rent or lease all of his Condominium by means of a written lease or rental agreement subject to the Restrictions shall not be impaired. Any failure by the lessee of the Condominium to comply with the terms of this Restated CC&Rs or the Bylaws of the Association shall constitute a default under the lease or rental agreement. Notwithstanding the foregoing, no Condominium in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Condominium. This Section may not be amended without the prior written approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages of Condominiums in the Project.

**Section 8.13. Drainage.** There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purpose hereof, "established" drainage in any Phase is defined as the drainage that exists as of the date hereof or at the time any Increment is annexed, or that which is shown on any plans approved by the Architectural Committee.

**Section 8.14. Water Supply System.** No individual water supply or water softener system shall be permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the City of Avalon County of Los Angeles, and all other applicable governmental authorities. Any sewage disposal system shall be installed only after

approval by the Architectural Committee and any governmental health authority having jurisdiction.

**Section 8.15. Common Area Balconies and Stairways.** Each balcony in the Common Areas and the stairways providing access to such balcony are reserved for the exclusive use of the Owners of the Condominiums served by such balcony and stairways. Such Owners shall be responsible for keeping such balcony and stairways free from debris, clean, and otherwise in a safe and orderly condition.

## ARTICLE IX

### INSURANCE

**Section 9.01. Duty to Obtain Insurance; Types.** The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments) with such limits as may be considered acceptable to FNMA (not less than \$1 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Property. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement cost of the Common Property and those portions of the Condominiums consisting of all fixtures, installations or additions comprising a part of the buildings housing the Condominiums and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance, as necessary, including, but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use. Fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, if any, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Owners in the Project, plus reserve funds. The Association may also obtain earthquake insurance if said insurance is reasonably available. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, GNMA and FHLMC, so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable

**Section 9.02. Waiver of Claim Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another and the Board of Directors to the extent that insurance proceeds are available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

**Section 9.03. Right and Duty of Owners to Insure.** It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and Improvements within his Condominium for which the Association has not purchased insurance in accordance with Section 9.01 hereof. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his individual Condominium or elsewhere in the Project. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. In addition, each Owner shall maintain liability insurance covering any vehicle the Owner, members of his Family or his guests bring on to or operate within the Project. Notwithstanding any provision hereof, the Association shall not acquire any casualty insurance covering Single Family Residences. Any such insurance shall be the responsibility of the Owners of Single Family Residential Lots.

**Section 9.04. Notice of Expiration Requirements.** If available, each of the policies of insurance maintained by the Association shall contain a provision that (a) said policy shall not be cancelled, terminated, materially changed, allowed to expire by its terms, and (b) the coverage under said policy shall not be reduced, without thirty (30) days' prior written notice to the Board and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be cancelled or substantially modified without ten (10) days prior written notice to any insurance trustee named pursuant to Section 9.06 and to each FNMA servicer who has filed a written request with the carrier for such notice. Each policy of insurance procured and maintained by the Association hereunder shall be issued by a company having not less than Best's A-VI rating.

**Section 9.05. Insurance Premiums.** Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners. That portion of the Annual Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Operating Fund to be used solely for the payment of premiums of required insurance as such premiums become due.

**Section 9.06. Trustee for Policies.** The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.01 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal herewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article X of this Restated CC&Rs. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within

ten (10) days of receipt of notice of any damage or destruction as provided in Article X, Section 10.04 of this Restated CC&Rs. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. Notwithstanding the foregoing, there may be named as an insured, a representative chosen by the Board, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

**Section 9.07. Actions as Trustee.** Except as otherwise specifically provided in this Restated CC&Rs, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy five percent (75%) of the first Mortgages held by first Mortgagees which have filed requests under Section 9.04. Duplicate originals or certificates of all policies of casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

**Section 9.08. Annual Insurance Review.** The Board shall Review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 9.01 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement cost of the Improvements on the Property, except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

**Section 9.09. Required Waiver.** All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Owners and tenants of the Owners;
- (b) any defense based upon coinsurance;
- (c) any right of setoff, counterclaim, apportionment, pro ration or contribution by reason of other insurance not carried by the Association;
- (d) any invalidity, other adverse effect, or defense on account of any breach of warranty or condition caused by the Association, any Owner, or any tenant of any Owner arising from any act, neglect or omission of any named insured or their respective agents, contractors and employees of any insured;
- (e) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

- (f) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium, and
- (g) any right to require any assignment of any Mortgage to the insurer.

## **ARTICLE X**

### **DESTRUCTION OF IMPROVEMENTS**

**Section 10.01. Restoration of the Project.** Except as otherwise provided in this Restated CC&Rs, in the event of any destruction of any portion of the Project, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Project shall be used for such purpose, unless otherwise provided herein. If the available insurance proceeds are insufficient to complete the reconstruction or repair of the Project, a Reconstruction Assessment shall be levied by the Board to make up the deficiency unless the Owners are entitled to elect not to rebuild the Project and in fact the Owners elect not to rebuild the Project as provided below. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by seventy five percent (75%) of the Owners and by the Beneficiaries of seventy-five percent (75%) of first Mortgages upon the Condominiums.

**Section 10.02. Election Not to Rebuild and Right to Partition.** The Owners shall be entitled to make an election not to rebuild the project as required under Section 10.01 above under the following circumstances:

(a) The damage or destruction to the Project occurs during the five (5) years immediately preceding the date of termination of this Restated CC&Rs.

(b) The damage or destruction results from earthquake or flood or other occurrence not the fault of the Association or any Owner or other person or entity using or occupying any portion of the Project under or through the Association or any Owner and not a casualty of the type required to be insured against under the policy or policies of fire insurance with extended coverage required to be carried by the Association under Article IX of this Restated CC&Rs, and the cost of repair or reconstruction of such damage or destruction is One Hundred Thousand Dollars (\$100,000) or more. If any damage or destruction occurs for which the Owners are entitled to make an election not to rebuild hereunder, the Board shall immediately call a special meeting of the Association to be held within forty-five (45) days after the damage or destruction occurred. At such meeting, the Board shall be authorized to levy a Reconstruction Assessment to provide the necessary additional funds for repair and reconstruction of the Project if such levy is approved by not less than eighty-five percent (85%) of the Owners present and entitled to vote, in person or by proxy, at such meeting and by all the

holders of record of first Mortgages on the Condominiums of the approving Owners. If such Reconstruction Assessment has not been approved within forty-five (45) days after the damage or destruction occurred, the Association and all Owners shall be conclusively deemed to have elected not to rebuild the Project (c) No Owner shall have the right to partition his interest in the Condominium, and there shall be no judicial partition of the Project, or any part thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in any Condominium. Each Owner and the successors of each Owner, whether by lease, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

**Section 10.03. Interior Damage.** With the exception of any casualty or damage insured against by the Association pursuant to Article IX, Section 9.01 of this Restated CC&Rs, restoration and repair of any damage to the interior of any individual Residence, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination to rebuild the Project after partial or total destruction, as provided in this Article X, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

**Section 10.04. Notice to Owners and Listed Mortgagees.** The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all Owners and Beneficiaries, insurers and Guarantors of first Mortgages on Condominiums in the Project, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Condominium, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Condominium who has filed a written request for such notice with the Board.

**Section 10.05. Use of Insurance Proceeds.** In the event of an insured casualty loss, no Class of Owners shall be entitled to the benefit of any insurance proceeds other than that portion of the insurance proceeds applicable to the Phase or Increment where the Owner's Condominium or Single Family Residential Lot is located and that portion of the insurance proceeds attributable to the Common Area or Common Property to which benefit the Owner is entitled.

## **ARTICLE XI**

### **EMINENT DOMAIN**

**Section 11.01. Definitions; Total Taking, Partial Taking, Special Partial Taking.** The term "taking" as used in this Article shall mean condemnation, taking or damage to all or any portion of the Project by exercise of power of eminent domain, whether by condemnation

proceeding or otherwise, or by transfer of all or any part of the Project made in avoidance of the exercise of the power of eminent domain. A "Total Taking" shall occur if there is a permanent taking by eminent domain of an interest in all or part of the Common Areas or of all or part of one or more Condominiums, such that the ownership, operation and use of the Project in accordance with the provisions of this Restated CC&Rs is substantially and adversely affected, and, within sixty (60) days after the effective date of the taking, the Owners of any Condominiums (i) not taken or (ii) only partially taken and capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively the "Remaining Condominiums") do not approve, by affirmative vote of a majority of their entire voting interest (without adjustment among such Condominiums for relative voting rights because of such partial taking), the continuation of the Project and the repair, restoration, and replacement to the extent feasible of the Common Areas and the Remaining Condominiums. A "Partial Taking" shall occur if there is any other permanent taking of the Project. A Partial Taking shall include, without limitation, a "Special Partial Taking" which is described herein "as a taking of all or part of one or more Condominiums, as Condominiums subject to all of the provisions of this Restated CC&Rs, without involving any taking of the Common Areas except to the extent of the proportionate interest therein of the Condominiums taken, so that the taking authority becomes successor in title to the Owner or Owners of the Condominium or Condominiums so taken with the same effect as if such Condominiums were purchased by the taking authority. Following any taking which, in the opinion of the Board of Directors, would constitute Total Taking in the absence of the affirmative vote of the Owners of the Remaining Condominiums as required by the foregoing provisions, the Board of Directors shall call a special meeting of Owners of the Remaining Condominiums to be held promptly, in any event within sixty (60) days after the effective date of such taking, to determine if such Owners of the Remaining Condominiums will or will not decide to continue the Project as provided herein.

**Section 11.02. Awards; Repair; Restoration and Replacement.**

(a) In the event of a taking, no Class of Owners shall be entitled to participate in any award other than that portion of the award applicable to the Phase or Increment where the Owner's Condominium or Single Family Residential Lot is located and that portion of the award attributable to Common Area or Common Property to which benefit the Owner is entitled.

(b) In the event of a Total Taking, the Board of Directors shall:

(i) Except as provided in Section 11.03 represent all of the Owners, with the exception of the Administrator of Veterans Affairs, an officer of the United States of America, in an action to recover any and all awards, subject to the right of all first Mortgagees of record, upon request, to join in the proceedings, and (ii) distribute the condemnation award as follows: (i) First, to to Association such portion of the award as shall represent compensation for the value (at the date of taking) of the Property.

(ii) Second, the balance .of the condemnation award to the Owners proportionately, such proportions to be computed by dividing the appraised fair market valuation of each Condominium in the Project as of the effective date of the taking by the total of the appraised fair market valuations of all Condominiums in the Project as of such effective date.

Notwithstanding the foregoing, no distribution shall be made to an Owner hereunder without first paying from such Owner's share in order of priority, the balance then due on any valid encumbrance of record on the Condominium of such Owner.

(c) In the event of a Partial Taking, other than a Special Partial Taking, the provisions of Section 11.02(a)(i) of this Article shall be applicable. The net proceeds of the Partial Taking awards shall be held by the Board of Directors and allotted by the Board of Directors to (i) the Association such portion of the as shall represent compensation for the value (at the date of taking) of the portion of the Property taken exclusive of the value of the reversionary interest in such portion of the Property (ii) the Association for the repair, restoration and replacement of the Common Property and the Remaining Condominiums, (but not Owners Personal Property or those portions of the Condominiums which the Owners are obligated to restore) to as nearly their condition prior to the taking as may be feasible, (iii) the Association such portion of the award as shall represent compensation for the value of its reversionary interest in the portion of the Property taken, and (iv) Owners of Condominiums totally taken or partially taken and not capable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking and Condominiums taken in the same manner as in a Special Partial Taking except that the taking is made subject to only some or to none of the Restrictions (collectively the "Taken Condominiums").

The proceeds of the Partial Taking award allotted to the Taken Condominiums shall be paid to the Owners of the Taken Condominiums; provided, however, that such proceeds shall first be applied to the balance then due on any Mortgages of record in order of priority before the distribution of any such proceeds to any Owner whose Condominium is subject to any such Mortgage. First Mortgagees of record with respect to the Remaining Condominiums affected by such Partial Taking shall be entitled to severance damages payable out of the award proceeds held by the Board of Directors to the extent that such Mortgagees can prove that their security has been impaired by such taking.

If the funds held for restoration by the Board of Directors are less than the cost of restoration and repair, a Reconstruction Assessment of the Owners of the Remaining Condominiums (determined with reference to the relative square foot floor areas of the Remaining Condominiums, as restored) may be levied by the Board of Directors to provide the necessary additional funds for such reconstruction. In no event shall the Board of Directors be required to undertake any repair or restoration work or make any payments with respect to any Condominium in excess of that portion of the awards reasonably attributable to the loss to that Condominium. Following any Partial Taking, the Association and the Project shall continue, subject to and with the benefit of all the provisions of this Restated CC&Rs, so far as applicable to the Remaining Condominiums, and the voting interests of the Owners shall be the same.

(d) In the event of a Special Partial Taking or a temporary taking of any Condominium, the Owner of the Condominium taken, together with his mortgagees, shall have exclusive rights to prosecute the proceedings for the respective taking awards and to retain the proceeds thereof. In the event of a temporary taking of Common Areas, the Board of Directors shall have exclusive rights to prosecute the proceedings for the respective taking awards and shall apply the proceeds thereof to reduce Common Expenses.

**Section 11.03. Awards for Owners' Personal Property and Relocation Allowances.**

Where all or part of the Project is taken by eminent domain, each Owner shall have the exclusive right to claim all of the award made for such Owners' personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, however, or the provisions of Sections 11.01 and 11.02, the Board of Directors, except in the case of a Special Partial Taking, shall represent each Owner in an action to recover all awards with respect to such portion, if any, of an Owner's personal property which is at the time of any taking, as a matter of law, part of the real estate comprising any Condominium, and shall allocate to such Owner so much of any awards as is allotted in the taking proceedings or, failing such allotment, allotted by the Board of Directors to such Owner's personal property. The amount so allocated shall be paid to the Owner entitled thereto, whether or not the Condominium in which such Owner's personal property was located is to be restored by the Board of Directors; provided, however, that such proceeds shall first be applied to the balance then due on any Mortgages of record encumbering such Owner's Condominium, in order of priority. Notwithstanding restoration of the Condominium, the Board of Directors shall have no responsibility for restoration of such Owner's personal property.

**Section 11.04. Relinquishment of Interest in Common Areas.**

Each Owner of a Taken Condominium in any Phase of Development, by his acceptance of the award allotted to him in a taking proceeding or by the Board as a result of a Partial Taking (other than especial Partial Taking), hereby relinquishes to the other Owners in such Phase of Development, on the basis of their relative ownership of the Common Areas therein, such Owner's undivided interest in the Common Areas and that portion, if any, of such Owner's Condominium which was not taken by the condemning authority. Each Owner of a Taken Condominium shall not be liable for assessments under this Restated CC&Rs, which accrue on or after the date of acceptance by such Owner of the portion of the condemnation award allotted to him. Each Owner relinquishing his interest in the Common Areas pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments that the Board deems necessary or convenient to evidence such relinquishment.

**Section 11.05. Notice to Owners and Listed Mortgagees.**

The Board of Directors, immediately upon having knowledge of any taking by eminent domain affecting a material portion of the Common Property, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantor of first Mortgages on Condominiums in the Project who have filed written request for such notice with the Board. The Board, immediately upon having knowledge of any taking by eminent domain affecting a Condominium, or any threat thereof, should promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Condominium who has filed a written request for such notice with the Board.

**ARTICLE XII**

**RIGHTS OF MORTGAGEES**

Notwithstanding any other provision of this Restated CC&Rs, no amendment or violation of this Restated CC&Rs shall operate to defeat or render invalid the rights of the Beneficiary

under any Deed of Trust upon a Condominium made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Condominium shall remain subject to this Restated CC&Rs, as amended. Notwithstanding any and all provisions of this Restated CC&Rs to the contrary, in order to induce FHLMC, GNMA and FNMA to participate in the financing of the sale of Condominiums within the Project, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLNC, FNMA, GNMA, VA Andhra, conflict with any other provisions of this Restated CC&Rs or any other of the Restrictions, these added restrictions shall control):

(a) Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the Mortgagor of such Condominium in the performance of such Mortgagor's obligations under the Restrictions, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Restated CC&Rs, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Every Owner, including every first Mortgagee of a Mortgage encumbering any Condominium, who obtains title to such Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Restriction.

(c) Each first Mortgagee of a Mortgage encumbering any Condominium which obtains title to such Condominium, pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Condominium free and clear of any claims for unpaid assessments or charges against such Condominium which accrued prior to the time such Mortgagee acquires title to such Condominium.

(d) Unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) or sixty-seven percent (67%) of the Owners have given their prior written approval, neither the Association nor the Owners shall:

- (1) by act or omission seek to abandon or terminate the Project; or
- (2) change the method of determining the obligations, assessment dues or other charges which maybe levied against any Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards; or
- (3) partition or subdivide any Condominium ; or
- (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Property under this Restated CC&Rs shall not be deemed a transfer within the meaning of this clause); or

(5) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Common Property of the Project; or

(6) fail to maintain or cause to be maintained Fire and, Extended Coverage on insurable Common Areas as provided in Article IX of this Restated CC&Rs; or

(7) use hazard insurance proceeds for losses to any Condominium property (i.e., Improvements to the Condominiums or Common Property) for other than the repair, replacement or reconstruction of such Condominium property, subject to the provisions of Article X of this Restated CC&Rs.

(e) All Beneficiaries, insurers and guarantors of first Mortgages, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Owners, and (4) designate in writing a representative to attend all such meetings.

(f) All Beneficiaries, insurer and guarantors of first Mortgagees, upon written request, shall be given thirty (30) days' written notice prior to the effective date of (1) any proposed material amendment to the Restrictions or Condominium Plans; (2) any termination of an agreement for professional management of the Project, if one exists, following any decision of the Owners to assume self-management of the Project; and (3) any proposed termination of the Project as a condominium project.

(g) The Common Property Reserve Fund described in Article V of this Declaration must be funded by regular scheduled monthly, quarterly, or semi annual payments rather than by large special assessments.

(h) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to employees of any professional Manager.

(i) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their residential Condominiums, if such agencies approve the Project as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering Condominium.

(j) Each Owner hereby authorizes the first Mortgagee of a first Mortgage on his Condominium to furnish information to the Board concerning the status of such first Mortgage and the loan that it secures.

(k) When professional management has been previously required by a Beneficiary, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of sixty-seven percent (67%) of the voting power of the Association and the Beneficiaries of fifty-one percent (51%) of the first Mortgages of Condominiums in the Project.

(l) All Improvements shall be consistent with the Improvements in Increment 1 (as shown on Exhibit "G" attached to the Original Declaration) in terms of quality of construction.

(m) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for Common Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE XIII

### DURATION AND AMENDMENT

**Section 13.01. Duration.** This Restated CC&Rs shall continue in full force for a term commencing on the date of recordation hereof and ending upon dissolution and winding up of the corporation in accordance with applicable law. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Condominium from the concomitant Membership in the Association, as long as this Restated CC&Rs shall continue in full force and effect. The provisions of this Article are subject to the provisions of Sections 10.02 and 11.02 of this Restated CC&Rs.

**Section 13.02. Amendment.** Notice of the subject matter of a proposed amendment to this Restated CC&Rs in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than sixty-seven percent (67%) of the voting power of the Association, provided that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Restated CC&Rs shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the Beneficiaries of seventy-five percent (75%), of the first Mortgage | on all of the Condominiums in the Project at the time of such amendment:

- (a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to Beneficiaries, insurers or guarantors of first Mortgages as provided in Articles V, IX, X, XI, XII and XIII hereof.
- (b) Any amendment which would necessitate an encumbrancer after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.
- (c) Any amendment which would or could result in an encumbrance being cancelled by forfeiture or in a Condominium not being separately assessed for tax purposes.
- (d) Any amendment relating to the insurance provisions as set out in Article X hereof, or to the application of insurance proceeds as set out in Article X hereof, or to the disposition of any money received in any taking under condemnation proceedings.
- (e) Any amendment that would or could result in termination or abandonment of the Project or partition or subdivision of a Condominium, in any manner inconsistent with the provisions of this Restated CC&Rs.

(f) Any amendment that would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be sold, transferred, or otherwise conveyed.

- (g) Any amendment concerning:
- (1) Voting rights;
  - (2) Rights to use the Common Property;
  - (3) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
  - (4) Boundaries of any Condominium;
  - (5) Owners' interests in the Common Areas;
  - (6) Convertibility of Common Areas into Condominiums or Condominiums into Common Areas;
  - (7) Leasing of Condominiums;
  - (8) Establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage;
  - (9) Annexation or de-annexation of real property to or from the Project; or
  - (10) Assessments, assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives written request from the Board to approve a proposed amendment or amendments to the Restated CC&Rs does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed amendment or amendments. Any proposed amendment must be submitted to the Planning Director of the City of Avalon for approval. Unless written disapproval is delivered to the Board within thirty (30) days after the date of receipt by the Planning Director of the City of Avalon of the proposed amendment, such amendment shall be deemed approved. A certificate signed and sworn to by two (2) officers of the Association that the record Owners of sixty seven percent (67%) of the Owners have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of first Mortgagees shall be signed and sworn to by two (2) officers of the Association stating that the amendment has been approved in accordance with this Section. Such a certificate reflecting any amendment which requires the consent of the City of Avalon shall include a certificate that the requisite approval of the City of Avalon has been obtained.

#### **ARTICLE XIV**

##### **PROVISIONS MADE VOID BY THE HAPPENING OF CERTAIN EVENTS**

**Section 14.01. Completion of Development of the Remaining Land.** Upon completion of the development of the Remaining Land which is deemed to occur upon the annexation of all of the Remaining Land into the Association and the sale of all of the

Condominiums and Single Family Residential lots, the provisions herein with regard to SCIC, its successors in title, and assigns shall no longer be in full force and effect. Until such time, SCIC, its successors, or assigns shall have the right to enforce any and all provisions hereof applicable to SCIC.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**Section 15.01. Legal Proceedings.** Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees, renters or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision or any other provision hereof. The Board, any Owner (not at the time in default hereunder), and the Association shall be entitled to bring an action for damages against any defaulting Owner and, in addition, may enjoin any violation of this Restated CC&Rs. Any judgment rendered in any action or proceeding pursuant to this Restated CC&Rs shall include a sum for attorneys' fees in such amount, as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each remedy provided for in this Restated CC&Rs shall be cumulative and not exclusive or exhaustive. Each Owner shall have a right of action against the Association for the failure by the Association to comply with the Restrictions.

**Section 15.02. Violation of Restrictions.** Without in any way limiting the generality of the foregoing, if the Board of Directors determines that there is a violation of any provision of this Restated CC&Rs, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, repair, restoration or painting, then the Board shall give written notice to the responsible Owner of the condition or violation complained of. Unless the Architectural Committee has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after it has given said written notice, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board, after Notice and Hearing, shall undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner and his Condominium whose Residence is the subject matter of the corrective work. Such cost shall be deemed to be a Special Assessment to such Owner and shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Restated CC&Rs. The Board may also adopt a schedule of reasonable fines or penalties, which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner or of a resident of or visitor to such Owner's Condominium, to comply with any provision of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

**Section 15.03. Severability.** The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one

provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of another provisions hereof.

**Section 15.04. Interpretation.** The provisions of this Restated CC&Rs shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential condominium and single family residence development and for the maintenance of Common Property, and any violation of this Restated CC&Rs shall be deemed to be a nuisance. The Article and Section headings, titles and captions have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

**Section 15.05. Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Restated CC&Rs governing the Project, together with the covenants and restrictions established upon any other property, as one plan.

**Section 15.06. Use of Recreational Facilities.** The Board of Directors shall have the right to limit the number of guests that an Owner or such Owner's tenant or renter may permit to use the recreational facilities on the Common Property, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said recreational facilities, in accordance with the Rules and Regulations, including, without limitation, Rules and Regulations restricting or prohibiting the use of all or designated portions of the Project recreational facilities by minors, guests of an Owner, or his tenants or renters.

**Section 15.07. No Public Right or Dedication.** Nothing contained in this Restated CC&Rs shall be deemed to be a gift or dedication of all or any part of the Project to the public, or for any public use.

**Section 15.08. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Association, or its agents or employees in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Condominium Project, except as specifically and expressly set forth in this Restated CC&Rs.

**Section 15.09. Non-liability and Indemnification.** Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by this Restated CC&Rs, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural Committee, or any other officer,

employee or agent of the Association. No such Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and shall satisfy any judgment or fine levied against, any Person as result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

(1) The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

(2) In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

(3) In the case of an action or threatened action by or in the right of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 15.09 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the Person to be indemnified shall not be entitled to vote. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 15.09 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

**Section 15.10. Notices.** Except as otherwise provided in this Restated CC&Rs, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Condominium. Such notice shall be deemed delivered seventy-two (72) hours after the time of such mailing, except for notice of a meeting of Members

or of the Board of Directors in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

**Section 15.11. Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Restated CC&Rs and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Restated CC&Rs shall prevail.

## **ARTICLE XVI**

### **ANNEXATION OF ADDITIONAL PROPERTY**

The Remaining Land or portions thereof (the "Annexable Property") may be annexed to the Association and such additional real property may become subject to this Restated CC&Rs by any of the methods set forth hereinafter. The Association may enter into an agreement or agreements with SCIC, its assigns or successor in title and any Developer of the Remaining Land or any portion thereof pursuant to which the Association agrees to annex an Increment upon performance of the terms of the agreement. The Association has the specific authority to enter into such an agreement which would result in the annexation of Increments 5B through 5G of Phase 5.

**Section 16.01. Additions by Association.** The Association shall have the right from time to time to add the Annexable Property, or any portion or portions thereof (including any recreation facilities located thereon), to the Project and to bring such added property within the general plan and scheme of this Restated CC&Rs upon approval thereof by the Board of Directors.

**Section 16.02. Other Additions.** In addition to the provision for annexation specified in Section 16.01 above, additional real property may be annexed to the Project and brought within the general plan and scheme of this Restated CC&Rs upon the approval by vote or written consent of Members entitled to exercise no less than two thirds (2/3rds) of the voting power of the Association.

**Section 16.03. Right and Obligations of Members of Added Property.** Subject to the provisions of Section 16.04, upon the recording of a Notice of Annexation of Property containing the provisions set forth in this Section, all provisions contained in this Restated CC&Rs shall apply to the real property described in such Notice of Addition of Property (the "Added Property") in the same manner as if it were originally covered by this Restated CC&Rs. Thereafter, the rights, powers and responsibilities of the parties to this Restated CC&Rs with respect to the Added Property shall be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Condominiums or Single Family Residential Lots within the Added Property, as well as within the property originally subject to this Restated CC&Rs, shall be the same as if the Added Property were originally covered by this Restated CC&Rs. Voting rights attributable to the Condominiums or Single Family Residential Lots in the Added Property shall not vest until

Annual Assessments have commenced as to such Condominiums or Single Family Residential Lots.

**Section 16.04. Notice of Addition of Property.** The additions authorized under Sections 16.01 and 16.02 shall be made by recording a Notice of Addition of Property, or other similar instrument with respect to the Added Property which shall be executed by the Association and SCIC, its assigns or successor in title and shall extend the general plan and scheme of this Restated CC&Rs to such Added Property ("Notice of Addition.") The recordation of said Notice of Addition shall constitute and effectuate the annexation of the added territory described therein, and thereupon said added Property shall become and constitute a part of the Project, become the subject to this Restated CC&Rs and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association, and the Owners of Condominiums or Single Family Residential Lots in said Added Property shall automatically become Members of the Association. Such Notice of Addition may contain a Supplemental Declaration with such additions and notifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Restated CC&Rs or as may be necessary to reflect the different character, if any, of the Added Property, or as the Association and SCIC, its assigns or successor in title may deem appropriate in the development of the Added Property, and as are consistent with the general plan and scheme of this Restated CC&Rs. In no event, however, shall such Notice of Addition or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Restated CC&Rs as the same shall pertain to the real property originally covered by this Restated CC&Rs.

**Section 16.05. On-Site Employee Condominium.** Any portion of the Common Property designated as an on-site employee dwelling Condominium by the Board of Directors shall be leased by the Association only to its on-site manager or other on-site employee of the Association and not to the general public.

## ARTICLE XVII

### **REDESIGN OF PROJECT REMAINING LAND**

**Section 17.01. Right of SCIC to Redesign Any Proposed Development of the Remaining Land.** SCIC, its assigns or its successor in title reserves the right, in its sole discretion, from time to time, to redesign any proposed development of the Remaining Land or any portion or aspect thereof, including, but not limited to, any Improvement constructed or proposed to be constructed on the Remaining Land in connection with such redesign. Nothing contained herein shall prevent SCIC, its assigns or successor in title from entering into a binding agreement with the Association regarding the development of the Remaining Land or any portion thereof.

**Section 17.02. Amendment to Condominium Plan.** If a redesign of all or any portion of the Project in accordance with the provisions of this Article affects any Condominium in and

Increment of Phase V in a manner which requires amendment of any Condominium Plan, including, without limitation, an amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, SCIC, its assigns or successor in title shall prepare, execute, acknowledge and record such amendment to the Condominium Plan. An amendment of the Condominium Plan by SCIC, its assigns or successor in title pursuant to this Section shall, when recorded, have the effect of (a) relocating the Common Areas therein and each Condominium or Single Family Residential Lot to the extent set forth on the amendment, (b) vesting in each Owner (including SCIC, its assigns or successor in title with respect to any unsold Condominiums or Lots) an undivided interest (to the extent of each Owner's pro rata interest in the Common Areas) in the Common Areas as depicted on the amendment, (c) divesting each Owner of all right, title and interest to any Condominium or Single Family Residential Lot, other than such Owner's Condominium or Lot, depicted on the amendment, (d) vesting in each Mortgagee an undivided interest (to the extent of the interest in the Common Areas of the Owner of the Condominium or Lot which is the subject of such Mortgage) in the Common Areas as depicted on the amendment, and (e) divesting each Mortgagee of all right, title and interest to each Condominium or Lot (other than the Owner's Condominium which is the subject of such Mortgage or other encumbrance) depicted on the amendment. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any such Mortgage with respect to any other matters affecting title to the Condominium that is the subject of such Mortgage.

**Section 17.03. Power of Attorney.** Each Owner of a Condominium or a Single Family Residential Lot in the ~~Project~~Remaining Land, by acquiring a Condominium or Lot shall be deemed to have constituted and irrevocably appointed SCIC, its assigns or successor in title as his Attorney-in-Fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to SCIC, its assigns or successor in title as his Attorney in Fact to effect the redesign of all or any portion of the Remaining Land in accordance with this Article and further:

(a) To prepare, execute, acknowledge and record any map or record of survey, required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Restated CC&Rs and as thereafter enacted or amended, and any ordinances, rules and regulations of the County of Los Angeles and any other governmental entities and authorities having jurisdiction over the development of the Remaining Land in effect on the date of the recording of this Restated CC&Rs and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare, execute, acknowledge and record any amendment to the Condominium Plans for the development of the Remaining Land, including, without limitation,

any amendments necessary to cause the Condominium Plans to conform with the Improvements as actually built, which may be required or permitted by the laws of the State of California as in effect on the date of the recording of this Restated CC&Rs and as thereafter enacted or amended, and any ordinances, rules and regulations of the County in which the Project is located and any other governmental entities and authorities having jurisdiction over the development of the Remaining Land as in effect of the date of the recording of this Restated CC&Rs and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligation and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare, execute, acknowledge and file for approval, any application for zoning or setback changes or variance or special use permits or other permits or reports required or permitted by the laws of the State of California as in effect on the date of the recording of this Restated CC&Rs and as thereafter enacted or amended, and any ordinances, rules and regulations of the County of Los Angeles and any other governmental entities and authorities having jurisdiction over the development of the Remaining Land as in effect on the date of the recording of this Restated CC&Rs and as thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make applications for any property reports or public reports or amendments thereto or exemption from the requirements therefor required or permitted by federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights by law;

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Restated CC&Rs and as hereafter enacted or amended by any federal, state and local governmental entities and authorities and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any improvement agreement and bonds

and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and relations;

(g) To prepare, execute, acknowledge and record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any constructed or unconstructed Condominiums on the Remaining Land; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

**Section 17.04. Indemnification of Owners on Exercise of Power of Attorney.**

SCIC, its assigns or successor in title shall indemnify and hold each Owner free and harmless from all liabilities, including attorneys' fees which are incurred as a direct result of the execution by SCIC, its assigns or successor in title of any improvement agreements or bonds, or both, in connection with the exercise by SCIC, its assigns or successor in title of the Power of Attorney set forth in Section 17.04 hereof.

**Section 17.05. Mortgage Interests and Other Encumbrances to Take Subject to Power of Attorney.** The acceptance or creation of any Mortgage or other encumbrance whether or not voluntarily created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in Section 17.04 hereof.

**Section 17.06. Effect on Assessment Liens.** Any lien to enforce the collection of assessments levied prior to the recording of an amendment to any Condominium Plan pursuant to this Article XVII shall be reconveyed and released with respect to each Condominium depicted on such amendment other than the Condominium that was originally the subject of such lien.

**Section 17.07. Exclusive Use of Construction Area of the Project.** Until construction is completed on that portion of the Common Property located on the Remaining Land ("Construction Area"), only SCIC, its assigns or successor in title and Persons authorized by SCIC, its assigns or successor in title may enter the Construction Area. SCIC, its assigns or successor in title hereby reserves an exclusive easement for construction access, ingress and egress over the Construction Area in all later Increments to allow SCIC, its assigns or successor in title to complete construction of the Condominiums, Single Family Residential Lots or Residences thereon and Common Areas as planned by SCIC, its assigns or successor in title. SCIC, its assigns or successor in title exclusive easement over the Construction Area in any later Increment shall terminate upon Commencement of assessments on Condominiums or Single Family Residential Lots in such later Increment. SCIC, its assigns or successor in title may deny access to any Person over the Construction Area in any Increment by fencing or by any other reasonable method until assessments commence on Condominiums or Single Family Residential Lots in such Increment.

This Restated CC&Rs is dated for identification purposes December ~~6-1~~ 2018~~4~~.

HAMILTON COVE HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_  
Norris J. Bishton, President

By: \_\_\_\_\_  
Martin Curtin, Secretary

**CERTIFICATE PURSUANT TO SECTION 13.02**

The President and Secretary of the Hamilton Cove Homeowners Association hereby certify as follows:

(1) On January 19, 2015, in excess of sixty seven percent (67%) of the record Owners voted for the above Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Hamilton Cove (the "Restated CC&Rs");

(2) The Restated CC&Rs did not require the approval of 75% of the First Mortgagees in accordance with Section 13.02 of the Original CC&Rs and Restated CC&Rs because the amendments did not affect said Mortgagees.

(3) The Restated CC&Rs were approved by the Planning Director of the City of Avalon in accordance with Section 13.02 of the Original CC&Rs and Restated CC&Rs. None of the amendments approved January 19, 2015 required the approval of the Planning Director of the City of Avalon because the amendments just reflected the change in ownership of Hamilton Cove as referenced in the Preamble.

(4) The undersigned are the duly elected President and Secretary of the Hamilton Cove Homeowners Association.

Dated \_\_\_\_\_, 2015

\_\_\_\_\_  
Norris J. Bishton, Jr., President

\_\_\_\_\_  
Martin Curtin, Secretary

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF CALIFORNIA       )  
  ) ss  
COUNTY OF LOS ANGELES    )

On \_\_\_\_\_, before me, \_\_\_\_\_, notary public,  
personally appeared Norris J. Bishton, Jr. personally known to me (or proved to me on the basis  
of satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he/she executed the same in his/her authorized capacity, and that by  
his/her signature on the instrument the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF CALIFORNIA       )  
  ) ss  
COUNTY OF LOS ANGELES    )

On \_\_\_\_\_, before me, \_\_\_\_\_, notary public,  
personally appeared Martin Curtin personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he/she executed the same in his/her authorized capacity, and that by  
his/her signature on the instrument the person, or the entity upon behalf of which the person  
acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

\_\_\_\_\_  
Notary Public

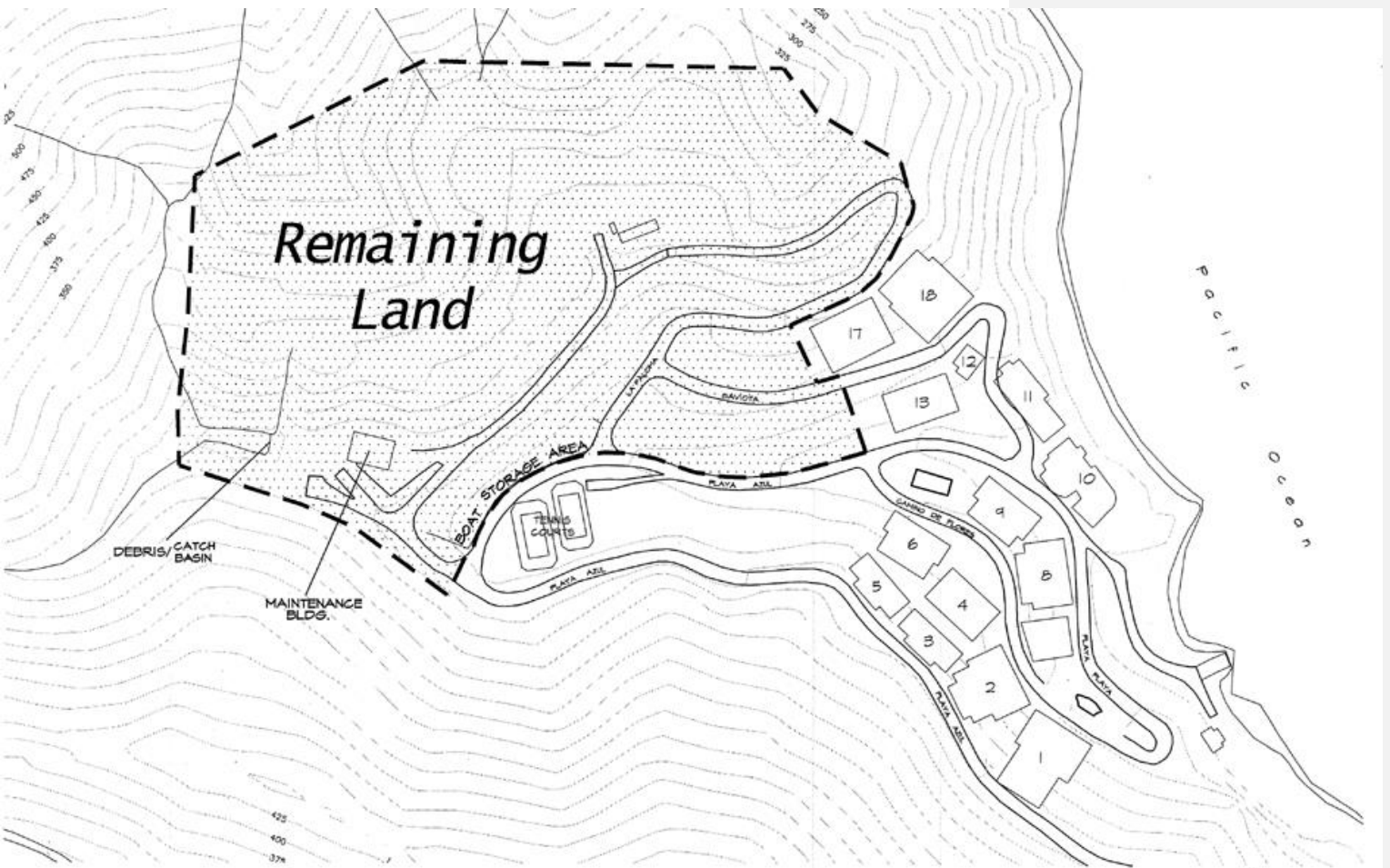


EXHIBIT 'I'  
HAMILTON COVE  
Santa Catalina Island Co.



APRIL '0

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