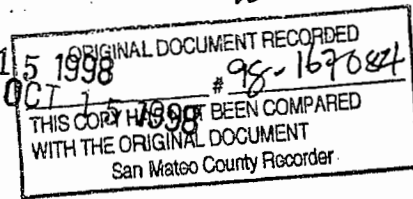


"If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code."

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Plum Island HOA
c/o Feingold & Youngling, PLC
810 Fifth Ave.
San Rafael, CA 94901

OCT 15 1998
OCT 15 1998



TITLE OF DOCUMENT

Declaration of Covenants, Conditions and Restrictions of Plum Island Homeowners Association (As Amended in 1998).

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
PLUM ISLAND HOMEOWNERS ASSOCIATION®
(As Amended in 1997)**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
PLUM ISLAND HOMEOWNERS ASSOCIATION
(As Amended in 1997)**

This Declaration of Covenants, Conditions and Restrictions of PLUM ISLAND HOMEOWNERS ASSOCIATION. ("Declaration" or "CC&Rs") is an amended version of the original Declaration entitled "Declaration of Covenants, Conditions and Restrictions for Plum Island" which was recorded in the office of the San Mateo County Recorder on May 9, 1977 as Document No. 16495AL, and as may have been subsequently amended (hereinafter "Former Declaration").

RECITALS

1. **Legal Description.** This Declaration governs all of the real property and improvements thereon located in the City of Foster City, described as:

Within the boundaries of the subdivision shown on the subdivision map entitled "TRACT NO. 55-77 PLUM ISLAND FOSTER CITY SAN MATEO COUNTY CALIFORNIA", which was filed in the Office of the Recorder of San Mateo County, California, in Book 94 of Subdivision Maps at pages 45 through 47 inclusive.

2. **The Property.** There are 73 homes in Plum Island which is a Planned Development within the meaning of the provisions of the California Davis-Stirling Common Interest Development Act (commencing at California Civil Code section 1350). Attached as Exhibit A is a site map generally depicting the Property. It is included for convenient reference and not as part of any legal description.

3. **This Amended Declaration.** The Association determined that its Former Declaration is outdated. Therefore the Members caused this Declaration to supersede the Former Declaration. This Declaration is for the purpose of enhancing and protecting the value, enjoyment, desirability and attractiveness of Plum Island.

4. **Applicability of Restrictions.** As amended, these covenants, conditions and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in any portion of the Property in the same manner as the Former Declaration, and shall be for the benefit of all Owners.

**ARTICLE I
DEFINITIONS**

Section 1. "Articles" means the Articles of Incorporation of Plum Island Homeowners Association, as amended from time to time.

Section 2. "Assessment" means a Regular, Special, Emergency or Reimbursement Assessment made or assessed against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

Section 3. "Association" means the PLUM ISLAND HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, and its successors and assigns, the **Members** of which shall be the **Owners** of the **Lots** within the **Property**.

Section 4. "Board" or "Board of Directors" means the governing body of the **Association**.

Section 5. "Bylaws" means the Bylaws of the **Association**, as may be amended from time to time.

Section 6. "Common Area" means all of the real property owned by the **Association** for the common use and enjoyment of its **Members**. This includes, for example, the pool and tennis courts. It does not include real property over which the **Association** has only an easement. The **Common Area** is more particularly described as follows:

Parcels A-G, inclusive, as shown on the above-described subdivision map of Tract 55-77.

Section 7. "Declaration" means this amended **Declaration** and any further amendments. The term **Declaration** is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&Rs".

Section 8. "Governing Documents" means collectively this **Declaration**, the **Bylaws**, **Articles**, rules, and any formal policies adopted by the **Board**, and any amendments to such documents.

Section 9. "Lot" means any plot of land, whether improved or unimproved, shown upon the recorded subdivision map of the **Property**, with the exception of the **Common Area**. Each **Lot** specifically includes any and all improvements thereon, including the residence itself.

Section 10. "Member" means a **Person** who holds membership in the **Association** and is synonymous with the term "**Owner**".

Section 11. "Mortgage" means any **Mortgage** or **Deed of Trust**, which constitutes a first lien upon a **Lot**.

Section 12. "Mortgagee" means the holder of the beneficial interest in any **Mortgage**.

Section 13. "Owner" means the record **Owner**, whether one or more **Persons** or entities, of a fee simple title to or undivided fee interest in any **Lot**. This includes contract purchasers, but excludes **Persons** having any interest merely as security for the performance of an obligation.

Section 14. "Person" means a natural person, corporation, partnership, trust or other legal entity. This term includes any **Owner**, **Member**, a family member, tenant, resident, guest or invitee.

Section 15. "Property" means all of the real property of Plum Island and includes all **Lots**, structures and **Common Area**.

ARTICLE II PROPERTY RIGHTS

Section 1. Common Area. Every Owner shall (consistent with the Use Restrictions of Article VI) have a right and easement of enjoyment in and to the Common Area and of access to and from his or her Lot over the various streets comprising a portion of the Common Area, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area;
- (b) The right of the Association to suspend the right of an Owner to use any recreational facilities on the Common Area (1) for any period during which any Assessment against such Owner's Lot remains unpaid; and, (2) for a period not to exceed 30 days for any infraction of the Association's published Rules and Regulations after notice and hearing by the Board ;
- (c) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Area as provided in Section 3 .

Section 2. Delegation of Use. Any Owner may delegate his or her right of use and enjoyment of the Common Area and any of its facilities to his or her guests, invitees, tenants or members of his or her family residing at the Property, subject to reasonable Rules and Regulations of the Association. No such delegation shall release an Owner from the obligation to pay Assessments to the Association as may be levied from time to time by the Association.

Section 3. Easements.

- (a) **Flow of Rainwater.** There shall be reciprocal appurtenant easements of encroachment between each Lot and such portion of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater.
- (b) **Utilities and Drainage Facilities.** Any easements for navigation and for installation, maintenance and repair of utilities and drainage facilities over and across the Common Area, whether dedicated on any subdivision map of the Property or created in some other way, shall be kept free of buildings and within such easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance and repair of such utilities and drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. All such easements shall at all times be accessible to all persons installing, repairing or maintaining such utilities and drainage facilities.
- (c) **PG&E Easement.** The Property is encumbered by an easement in favor of Pacific Gas and Electric Company, which easement is described by instrument recorded on October 5, 1929, in Book 436 at page 189 of Official Records of San Mateo County.

Section 4. No Partition. Except as provided by California Civil Code section 1359, there shall be no further subdivision or judicial partition of the Property or any part, nor shall any Person acquiring an interest in the Property or any part thereof seek any judicial partition or subdivision, provided, however, that if any Lot is owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing in this Declaration shall be deemed to prevent a judicial partition as between co-tenants.

Section 5. Fence Lines and Property Lines. In order to provide for the efficient utilization of land in the development, there exists as may be specified by deed for the benefit of any Lot, an exclusive easement appurtenant to such Lot for access to and use and enjoyment of a portion of an adjoining Lot. Whenever such easement is created, the Owner of the servient tenement shall have the right of access to that portion of his or her Lot so encumbered for the purpose of promptly conducting maintenance or repairing or restoring in a timely manner the dwelling or fences located on the Lot; provided, however, that upon completion of any such maintenance, repair or restoration the Owner of the servient tenement shall repair or replace any landscaping or other improvements damaged by her or her use of the easement. Any such easement only exists by deed which particularly describes the easement; the easement passes with conveyance of the dominant tenement, whether or not referred to in the instrument of conveyance. No alternation or termination of the easement or severance of the easement from the dominant tenement shall occur or be valid without the prior written consent of the City of Foster City or its successor in interest. Any such consent so given shall be affixed to the instrument altering, terminating or severing the easement, which instrument shall be effective only upon recording in the official records of the County of San Mateo, State of California.

ARTICLE III

DUTIES AND POWERS OF THE ASSOCIATION

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

Section 1. Utilities: Procure and pay for water, sewage, garbage, electrical, gas, telephone and other necessary utility service for the Common Area and (to the extent not separately metered or charged) for the Lots.

Section 2. Common Area Services: Procure and pay for gardening and landscaping services; charges for maintaining, and cleaning any portion of the Common Area.

Section 3. User Fees. The Association shall have the power to impose and collect reasonable fees for the use of Common Area recreational facilities.

Section 4. Insurance: The Association shall have the power and obligation to obtain and maintain in effect the insurance described in Article VIII.

Section 5. Legal and Accounting: Procure and pay for legal and accounting services necessary or proper for the maintenance and operation of the Common Area or the enforcement of this Declaration.

Section 6. Taxes: Pay all taxes and assessments, if any, levied or assessed separately against the Common Area.

Section 7. Discharge of Liens. Pay, bond around or otherwise cause the discharge of any lien or encumbrance, including taxes, levied against any Lot which, in the opinion of the Association, may constitute a lien against the Common Area; PROVIDED, HOWEVER, the Association shall levy a Reimbursement Assessment against such Lot for such amount. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of removing or discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said Owners.

Section 8. Other Obligations of the Board. Procure and pay for any other goods, materials, supplies, labor, services, painting, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is authorized to secure or pay for pursuant this Declaration or by law, or which is reasonably necessary in the discretion of the Board for the convenient operation of the Common Area.

Section 9. Authority for Reasonable Entry for Maintenance or Construction: The Association, or its agents, may enter upon any Lot, whenever such entry is reasonably necessary in connection with the performance of any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to an Owner as is practical.

Section 10. Manager: The Board may delegate the daily management duties to a manager or management company who or which is subject to the direction and control of the Board. This includes the authority to hire, as an employee or independent contractor, an "on-site" manager.

Section 11. Consolidation and Mergers: To the extent permitted by law, the Association may participate in mergers, consolidations and/or affiliations with other non-profit corporations organized for the same purposes of this Association, provided it is with the assent of a majority of the voting power of Members voting in person or by proxy at a meeting duly called for this purpose. Written notice of said meeting (which notice shall set forth the purpose of the meeting) shall be given to all Members at least thirty (30) days in advance of the meeting.

Section 12. Dedication: The Association, as the agent of all Owners, shall have the power to dedicate any of the Common Area to an appropriate public authority for public use, provided that any such dedication shall have the assent of seventy-five percent (75%) of the membership. The Board may grant Common Area easements or licenses to utility companies or public entities, so long as the grant benefits the Owners and does not significantly interfere with the Owners' use of the Common Area.

Section 13. Rules:

(a) Rule Making and Policy Making Power. The Board may propose, enact and amend rules and/or policies of general application to the Members relating to the use of any part of the Property by the Members and other Persons including renters and their guests. Such subjects may include parking, recreational vehicle parking, car washing, storage, trash and garbage disposal, use of recreational facilities, laundry, pets, signs, holiday decorations, displays, and activities which might adversely affect the Property or its appearance or might offend, inconvenience, annoy or endanger the Owners or residents.

The rules shall not, however, be inconsistent with or materially alter any provision of the Articles, Bylaws or Declaration. In the event of any material conflict, the provision contained in the Articles, Bylaws or Declaration shall be deemed to prevail.

(b) Amendment of Rules and Policies. The rules and/or policies may be amended by majority vote of the Board. Amendments shall be distributed to the Members either by mail or delivered to each Lot, or posted in a conspicuous place within the Common Area. Any amendment shall become effective upon distribution, posting, or at such later date as the Board may specify.

(c) Distribution of Rules and Policies. A copy of the new or amended rules and/or policies shall be mailed or otherwise delivered to the Members or posted in the Common Area, and a current copy shall be maintained in the Association's corporate records. The Board shall not be obligated to send more than one copy per Lot.

(d) Breach of Rules and/or Policies. Any breach of the rules and/or policies shall give rise to the rights and remedies set forth in Article XII hereof.

ARTICLE IV
ASSESSMENTS

Section 1. Assessments Generally. Each Member, by acceptance of a deed, is deemed to covenant and agrees to pay to the Association Assessments, together with interest, late charges, costs, and legal fees, which shall be a charge on the Lots and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment and charge shall also be a joint and several personal obligation of each Person who holds an ownership interest in such property at the time when the Assessment becomes due and payable. All delinquent Assessments shall be subject to the provisions of Section 3.

(a) Regular Assessments. The Board shall establish for each fiscal year an Annual Assessment to be allocated equally among all Lots and (unless otherwise provided) payable in twelve (12) equal monthly increments. Such monthly payments shall be due on the first day of each month and be delinquent if not received by the Association by the 15th of the month.

(b) Special Assessments. Special Assessments shall be allocated equally among all Lots.

(1) Non-Emergency. Special Assessments may be levied for the purpose of defraying, in whole or in part, actual or estimated revenue shortfalls in the budget adopted by the Board for the fiscal year or such other purposes as the Board deems appropriate.

(2) Emergency. In the event of an emergency situation as provided for in Civil Code section 1366, the Board may levy a special Assessment. For purposes of this section, an emergency situation exists when an extraordinary expense is:

(i) required by an order of a court, or

(ii) necessary to repair or maintain the Property, in whole or in part, for which the Association is responsible where a threat to personal safety on the Property is discovered, or

(iii) necessary to repair or maintain the Property, in whole or in part, for which the Association is responsible where the work and cost could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget.

However, prior to the imposition or collection of an emergency special Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.

(c) Reimbursement Assessments.

(1) Definition. A Reimbursement Assessment is a charge against any Member (and/or tenant) and the Member's Lot. It may be levied where a failure to comply with the Governing Documents or other misconduct by any Member, or the lessees, guests, servants, employees, licensees, or invitees of a Member has (i) necessitated or will necessitate an expenditure of monies by the Association, (ii) resulted in the imposition of a fine or penalty, or (iii) caused any increase in the premiums for or reduction in coverage of Association insurance. It may also be levied by mutual agreement between a Member and the Association.

(2) Determination. Unless otherwise agreed between the Association and Member, if the Association finds a Reimbursement Assessment may be appropriate, before levying it, the Association must provide reasonable notice to the individual and provide an opportunity, for individual response in writing or in person to the Association. After due consideration, the Association may decide whether or not to levy, collect or otherwise enforce the Reimbursement Assessment.

(3) Collection. A Reimbursement Assessment shall be due and payable to the Association when levied or such later time as may be set. A Reimbursement Assessment may be collected in the same manner as regular Assessments.

Section 2. Assessment Level Increases.

(a) Approval of Board of Directors. The Board may impose a regular Assessment up to and including twenty percent (20%) greater than the aggregate regular Assessment levied in the Association's preceding fiscal year. In order to exercise this discretionary power to increase regular Assessments, the Association must have complied with Civil Code section 1365(a) [See Exhibit B, at Section 1(a)]. The Board may impose special Assessments which in the aggregate do not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The Board also has the power to levy an emergency Assessment pursuant to Article IV, Section 1(b).

(b) Approval of the Members. Assessments may be increased above the amounts set forth in Section 2(a) above, only with the approval of a majority of a quorum of Members. For purposes of this section, quorum means more than fifty percent (50+%) of the Members of the Association. (Based on 73 Lots, this would require participation by the voting power of at least 37 Lots and the approval by Owners of at least 19.)

(c) Notice. The Association shall provide notice by first-class mail to Members of any increase in the regular or special Assessments, not less than thirty (30) days nor more than sixty (60) days prior to the increased Assessment becoming due.

Section 3. Enforcement of Assessments.

(a) Delinquency. The Association shall adopt and distribute a collection policy which shall provide for the enforcement of Assessments, including the provisions set forth below.

(1) reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorney's fees,

(2) a late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars (\$10), whichever is greater,

(3) interest on all sums imposed, including the delinquent Assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve percent (12%) interest, commencing thirty (30) days after the Assessment becomes due.

(b) Returned Checks. A Member who writes a check to the Association which is returned for any reason shall pay a reasonable charge set by the Association for processing such check. If the check cannot be negotiated, payment shall be demanded in accordance with California Civil Code section 1719, which is entitled "Treble Damages for Failure to Pay Amount of Dishonored Check."

(c) **Acceleration of Annual Assessment.** If any Assessment is delinquent for a period of more than sixty (60) days or a Member is delinquent three (3) or more times within a twelve month period, the Association may declare the entire balance of the annual Assessment (plus any other outstanding Assessment) immediately due and payable in full, together with any other delinquent amounts. Late charges and interest shall not accrue on the accelerated Assessment amount unless or until each installment would otherwise become due.

(d) **Lien.** There is a present lien with power of sale against each Lot to secure payment of all Assessments levied against the Lot. This includes all additional charges and sums which become due and payable after the date of recordation of a notice of delinquent Assessment. Except for the transfer of a Lot by foreclosure proceeding, the sale or transfer of a Lot shall not affect such a lien.

(e) **Non-judicial Foreclosure.** The Association shall have the power to conduct non-judicial foreclosure in order to collect delinquent Assessments. (The power of non-judicial foreclosure does not apply to liens resulting from fines and penalties). Each Member hereby appoints as trustee the Person designated by the Association as "trustee" in the Notice, or such substitute trustee as is designated pursuant to Civil Code section 2934(a). Additionally, such Member empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Civil Code section 1367(d), or by judicial foreclosure. Each Member further grants to the trustee the power and authority to sell the Lot of any defaulting Member to the highest bidder to satisfy such lien.

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

(g) **Other Recourse.**

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

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

(3) In the event a Member is sixty (60) or more days delinquent, any tenant during that period who continues to rent the Lot shall become jointly and severally liable for all new regular, special, reimbursement and emergency Assessments as they come due. If the tenant makes such payment to the Association, the Member acknowledges it shall be deemed a credit or offset against rents otherwise due from tenant to Member.

Section 4. Grantee Liability.

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

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

(c) Priorities. When a notice of delinquent Assessment has been recorded, such Assessment shall constitute a lien on the Lot prior and superior to all other liens except (1) all taxes, bonds, and other governmental levies which by law would be superior thereto, and (2) the lien or charge of any Mortgage of record made in good faith, for value and recorded prior to the Association's lien. Any foreclosure shall not relieve such Lot from liability for the pro rata share of the annual or other Assessment that would otherwise be payable after the foreclosure.

Section 5. No Waiver or Offset. No Member may exempt himself or herself from personal liability or release his or her Lot from liens and charges by waiver of any Member rights or by abandonment or non-use of any Lot. Each Member, to the extent permitted by law, waives the benefit of any homestead or exemption law of California in effect at the time that any Assessment or installment hereof becomes delinquent or any lien is imposed (see generally *Lien Exception to Homestead Right* - Code of Civil Procedure Section 703.010(b)). No offsets or deductions against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

ARTICLE V
RESPONSIBILITIES FOR MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Association Responsibilities - Common Area. The Association shall control and pay for the maintenance, repair and replacement of all Common Area including any improvements thereon. This includes streets and street sidewalks.

Section 2. Association and Owner Responsibilities for Maintenance, Repair and Replacement - Owners' Lots. Plum Island is a Planned Development wherein each Owner actually owns a Lot and all improvements on the Lot, including the residence. Owners are responsible for all maintenance, repair, and replacement of improvements on the Lot unless specifically assigned to the Association. As to those components for which an Owner is responsible for maintenance, repair and/or replacement, and which are visible from any other Lot, Common Area or public area, any work or change which would alter the appearance from the original construction or configuration must be approved in advance by the Association pursuant to the provisions of Article XI of this Declaration.

The following sets forth Association and Owner responsibilities for certain components and systems. Any component not addressed herein may be the subject of a policy adopted by the Board.

(a) **Walkways and Driveways.** . The Owner shall be responsible for the maintenance, repair and replacement of the driveway, other walkways and flatwork on the Owner's Lot.

(b) **Fences.**

(1) Neighboring Owners shall, by mutual agreement, share the maintenance, repair and replacement cost of the fence that they share. In the event that neighbors do not agree, they shall each maintain their respective sides and repair and replacement costs shall be divided equally. In the event of a dispute with respect to fence obligations, the matter shall be submitted to binding arbitration. The arbitrator may require that maintenance, repair, replacement, and/or reconstruction be performed and divide the cost between the Owners. In the event that the Owners cannot agree on one arbitrator, one shall be selected by the presiding Judge of the San Mateo County Superior Court.

(2) Any damaged fence or fence obviously in need of repair shall be addressed by the Owner within sixty (60) days of the date of the damage or notice of required repair. Should the Owner require more time to accomplish the required repairs, he or she must give written notice to the Board indicating the reasons for the delay and sets forth a reasonable time frame in which the repairs will be completed.

(3) The Owner shall be responsible for the maintenance, repair and replacement of all hardware on gates.

(c) **Service and Utility Lines.**

(1) The Owner (or appropriate utility company) shall be responsible for the maintenance, repair and replacement of all service sewer and utility lines serving the Owner's residence and Lot and not otherwise the responsibility of a utility company or district.

(2) The Association shall be responsible for the maintenance, repair and replacement of service sewer and utility lines benefitting the Common Area and not otherwise the responsibility of a utility company or district.

(d) Landscaping.

(1) The Association shall maintain, replace and otherwise control the trees, shrubs, grass, and other landscaping, as well as the landscaping irrigation system, in and around the Common Area as well as the retaining barriers and plant supports on the unenclosed portion of each Lot. The unenclosed portion of such Lot shall include those portions exterior of the dwelling located on the Lot and exterior of any atrium, patio or yard. A yard area that is enclosed on one or more sides by the lagoon shall not be considered as unenclosed hereunder. To carry out its responsibility, the Association shall have an easement over each Lot for planting, repairing, replacing and maintaining landscaping and for reasonable access to each Lot to perform such work, and each Owner shall accept title to his or her Lot subject to the aforesaid rights of the Association. The Association shall maintain any landscaping improvements made with the PG&E easement and limit such landscaping to a maximum height of fifteen (15) feet from the surface ground level.

(2) The Association is responsible for the maintenance, repair and replacement of such minor ground contouring as would routinely be performed by a landscape contractor. The Owner is responsible for any regrading necessary or appropriate for the evacuation of rainwater and excess irrigation.

(3) The Owner shall maintain, replace and otherwise control all landscaping within the fenced area, deck or patio area of the Owner's Lot. Upon request of the Owner, the Association has the power to delegate landscaping responsibility to the Owner and impose reasonable conditions, including recordation of any such agreement with title (thereby binding all future Owners of that Lot.) When an Owner returns the responsibility for maintenance of landscaping in the unenclosed portion of his or her Lot to the Association, the Owner will be required to pay for the cost of returning the landscaping to that which the Association maintains.

(4) The Board may adopt guidelines, rules, and procedures regulating the placement and type of trees, shrubbery and other vegetation permitted within Owner's Lots and addressing problems related to trees (including roots and branches) and other vegetation that extends across Lot lines or other areas of responsibility.

(5) The Board may grant a license for use of certain Common Area immediately adjacent to applicant's Lot. The license must be in writing and recorded with title. It shall include such terms and conditions as the Board determines to be appropriate. If, upon Association request, the Owner fails to make available a copy of the executed agreement, it shall be presumed that no approval has been granted. Prior to granting any license, the Board must make good faith findings that the encroachment:

- (i) Will not be aesthetically objectionable;
- (ii) Will not interfere with the privacy of any other resident;
- (iii) Will not block view(s) from any other residence; and
- (iv) Will not materially interfere with any part of the Common Area actively used by other residents.

(e) Bulkheads. The Owner shall be responsible to maintain, repair and replace that portion of the bulkhead which benefits that Owner's Lot. This may include a portion of a neighboring Lot which lies within the yard area controlled by the benefitted Owner. The Association may, with the consent of the respective Owners, assume responsibility to coordinate and cause repair and maintenance where such work must be performed on more than one Lot.

(f) Storm Drainage Facilities. The Association shall maintain, repair and replace Common Area storm drainage components. The Owner is responsible to maintain, repair and replace Lot storm drainage components.

Section 3. Enforcement.

(a) Common Area. If the need for any maintenance, repair or replacement of any Common Area (or component for which the Association is responsible) is caused through the willful or negligent act of an Owner or the Owner's family, guests, tenants, invitees, lessees, or pets, then the Association may cause the work to be performed and upon determination of responsibility may levy a Reimbursement Assessment against the Owner and/or the Owner's Lot.

(b) Lot and Dwelling. If the Board reasonably finds a Lot or dwelling requires maintenance, repair or replacement of any component or condition for which the Owner is responsible, the Board may direct the Owner to perform the work and if the Owner fails or refuses to do so within a reasonable period of time, the Association may utilize the provisions of Article XII entitled *Enforcement of Governing Documents*, and cause the work to be performed and levy a Reimbursement Assessment. The Association may also utilize the provisions of Article XI, Section 7(c) entitled "*Association Options for Continuing Nuisance.*"

(c) Entry for Repairs. The Board, its agents or its contractors may enter onto any Lot or access the exterior of any residence or roof when necessary in connection with any maintenance, repair, landscaping, construction or easement for which the Association is responsible. Such entry shall be made with as little inconvenience to the residents as is practical, and any damage caused thereby shall be repaired by the Association. Whenever possible, at least twenty-four (24) hours notice will be given to the resident.

(d) Continuing Nuisance. Failure of an Owner to perform any maintenance, repair or replacement determined by the Board to be the Owner's responsibility and necessary shall be deemed a continuing nuisance.

(e) Other Options. These enforcement options shall be in addition to those provided for in Article XII.

ARTICLE VI USE RESTRICTIONS

The Property shall be occupied and used as follows:

Section 1. Use of Lots. Each Lot shall be occupied and used exclusively for residential purposes and for no other purpose.

Section 2. Use of Common Area. All use of the Common Area is subject to Association rules and restrictions. Use of the Common Area is further subject to the following:

(a) Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area. No Owner shall permit anything to be done or kept in the Common Area which will result in the decrease in coverage or cancellation of insurance on any Lot or Common Area, or which would be in violation of any law.

(b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area, in accordance with guidelines adopted by the Board or in designated storage areas.

(c) Nothing shall be done to or in the Common Area which has an adverse effect on its enjoyment, use, value, condition or appearance. Owners shall be liable for their own acts, as well as jointly for those of family members, tenants, guests and invitees. Any damage or destruction to the Common Area may be cause for a Reimbursement Assessment against the tenant, lessee, Owner and his or her Lot.

(d) Nothing shall be altered or constructed or removed from the Common Area, except upon the written consent of the Board.

(e) There shall be no violation of the rules for the use of the Common Area.

(f) The Association may require deposits and/or user fees for the private use of the Common Area, such as Association recreational facilities.

Section 3. Signs. No sign of any kind shall be displayed to the public view on or from any Lot or the Common Area without the prior written consent of the Association, except customary name and address signs, and lawn signs of not more than three square feet in size advertising the property for sale or rent.

Section 4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or the Common Area, except that a maximum of two (2) domesticated animals (such as a dog or cat or other household pet) may be kept on any Lot, provided they are not kept, bred, or maintained for any commercial purpose. Any such household animal which is kept shall only be allowed if it does not cause an unreasonable annoyance or nuisance to Persons residing at the Property.

Section 5. Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents.

Section 6. Vehicles.

(a) **Rules.** In order to promote traffic safety and enhance the appearance of Plum Island, Owners shall park, store or keep vehicles in accordance with Association rules.

(b) **Vehicle Type Restrictions.** No Owner shall park, store or keep any large commercial type vehicle (dump truck, flatbed, oil or gas truck, etc.), any recreational vehicle (camper unit, motor home, trailer, boat trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length, aircraft or any vehicle other than a private passenger vehicle except wholly within the driveway or garage located upon his or her Lot. The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation (and not used for commercial purposes).

(c) **Other Limitations.**

(1) No resident shall park, store or keep any vehicle other than a private passenger vehicle upon his or her driveway for a period longer than thirty-six (36) hours. There shall be no parking of resident vehicles in the guest parking area.

(2) The resident of each Lot shall not be permitted to have or maintain more than two (2) motor vehicles on unenclosed portions of the Property. Common Area parking facilities shall not be used for storing unlicensed or inoperable motor vehicles of any type.

(3) No resident shall repair, overhaul, restore or service any motor vehicle, boat, trailer, aircraft or other vehicle upon any unenclosed portion of a Lot or upon any part of the Common Area, except for emergency repairs necessary to enable movement to a proper repair facility.

(4) No vehicle which emits extraordinary levels of exhaust pollution or noise, as determined by the Board, shall be operated within the Property.

(d) **Towing.** The Association may cause any vehicle parked on Common Area in violation of the Governing Documents to be towed (California Vehicle Code section 22658.2).

Section 7. Satellite Dishes, Antennae, External Fixtures, etc. No radio or television aerial, antenna, tower, transmitting or receiving aerial, antenna, tower or support, television cable or other exterior wiring, satellite dishes or other exterior fixtures shall be erected, installed, placed or maintained upon any Lot, without the prior written consent of the Association.

Section 8. Garages. No area of any residential structure which is intended to be used primarily for the parking of passenger vehicles shall be converted to use as a living area. Garages may only be used for parking of vehicles and other use and/or storage which will not interfere with parking of vehicles.

Section 9. Restriction on Businesses. No trade or business shall be conducted within the **Property**, except for such professional and administrative work as may be permitted by City Ordinance, provided there is no external evidence thereof and it is conducted in accordance with guidelines adopted by the Board. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle or foot traffic within the **Property** or to the **Lot**, (c) cause any damage to the **Common Area**, or (d) adversely affect or increase the cost of Association insurance.

Section 10. Exterior Wiring. No telephone, cable television or other wiring shall be routed along the building exterior unless prior approval has been obtained from the Association. The Association may summarily remove unauthorized wiring from the **Common Area**.

Section 11. Rubbish Disposal. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any **Lot** or the **Common Area**, except in sanitary containers located in an appropriate area, screened and concealed from view.

Section 12. Illegal Acts. Any illegal act shall also constitute a breach of the **Governing Documents** and may, at the option of the Association, be enforced as such.

ARTICLE VII

SALE OR LEASE OF LOTS

Section 1. Rental or Lease of Lots. It is the intent of this section to protect, enhance and maintain the single family residential atmosphere which exists within the **Property** and to avoid occupancy of residences for short periods of time or by an unreasonable number of individuals. Accordingly, an Owner shall be entitled to rent or lease his or her **Lot** if:

(a) There is a written rental or lease agreement specifying that (1) the tenant shall be subject to all provisions of the **Governing Documents**, (2) a failure to comply with any provision of the **Governing Documents** shall constitute a breach of the agreement, and (3) all tenants are subject to disciplinary action or other actions by the Association to enforce the **Governing Documents**;

(b) The initial period of the rental or lease is not less than sixty (60) days;

(c) The Owner provides any tenant or lessee with current copies of all the **Governing Documents**. The Owner shall also provide copies of any subsequent changes or additions. The Association may require evidence that the tenant or lessee has received copies of all **Governing Documents**. If such evidence is requested and is not timely provided, the Association may unilaterally provide such copies and charge the Owner;

(d) Any Owner may delegate his or her right of use and enjoyment of the **Common Area** and any of its facilities to his or her guests, invitees, tenants or members of his or her family residing at the **Property**, subject to reasonable Rules and Regulations of the Association. The Owner and the tenant or lessee shall be jointly and severally liable at all times for compliance by

the tenant or lessee with the Governing Documents during the tenant's or lessee's occupancy and use of the Lot. No such delegation shall release an Owner from the obligation to pay Assessments to the Association as may be levied from time to time by the Association;

(e) The Owner shall be responsible for any damage caused by the tenant, lessee or guest to Association property;

(f) The Owner shall notify the Association of the name and day and evening telephone numbers for each tenant or lessee within ten (10) days of the change in occupancy.

Section 2. Sale of Lots - Obligations of Owners. Owners shall be subject to the following:

(a) Owner's Duty to Notify Association of Contract Purchasers. Each Owner or Owner's representative shall notify the Association of the names of any contract purchaser of the Owner's Lot.

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

(c) Notification Regarding Governing Documents.

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

(i) a current copy of the Governing Documents;

(ii) a copy of the then current rules and/or policies;

(iii) a copy of the most recent documents distributed pursuant to Civil Code section 1365; and

(iv) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold.

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

Section 3. Termination and Commencement of Obligations. Even if an annual Assessment has been levied or a special Assessment is payable in installments, when ownership changes occur:

(a) the transferor-Owner shall be personally liable for the pro rata share of all annual and other Assessments which became payable up to the time of transfer, and

(b) the receiving-Owner shall be responsible personally for the pro rata share reflecting payments actually payable after acquisition of the ownership interest.

In the event payment of an annual or other Assessment has been accelerated under CC&R Article IV, Section 3(c), upon change in title, the personal liability of both parties shall nonetheless be prorated. Therefore, neither shall be personally liable for amounts due and payable during a time when no ownership interest is held.

Section 4. Notice of Acquisition. A purchaser or their representative or other Person acquiring an ownership interest to a Lot shall notify the Association not more than ten (10) days after the date of acquisition and provide (a) the name(s) of all Persons with an ownership interest as listed on the recorded title transfer documents, (b) a mailing address for the Owner(s), (c) day and evening telephone numbers, and (d) the effective date of acquisition of each ownership interest.

ARTICLE VIII **INSURANCE**

Section 1. Types of Insurance. The Association shall procure and maintain the following types of insurance:

(a) **Fire and Hazard Insurance.** Fire and hazard insurance with extended coverage for the full replacement value of improvements in the Common Area.

(b) **Additional Endorsements.** To the extent not included in the basic policy coverage, the Association may procure the following additional coverage: demolition, foundations, building code mandated upgrades, walls, fences and appurtenant structures

(c) **Liability Insurance.** Liability insurance to protect against any liability to the public or to any Owner incident to the ownership and use of the Common Area. The limits of such insurance shall be not less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. The liability insurance shall identify as separately protected insureds the Association, the Members, and the Board from liability in connection with the maintenance and use of the Common Area.

(d) **Director and Officer Insurance.** Insurance covering Directors, Officers, committee members and volunteers acting under the direction of the Board from errors and omissions.

(e) **Fidelity Bond.** The Association may obtain a standard fidelity bonds covering all officers and directors of the Association and such other employees of the Association, as the

Board shall determine, in the minimum sum of \$10,000 or in such greater as the Board may determine from time to time.

(f) Other Insurance. Worker's Compensation insurance to the extent necessary to comply with applicable laws, and any other insurance deemed necessary to comply with applicable laws and/or deemed necessary by the Board.

Section 2. Coverage Not Available. If any insurance policy or endorsement required by Section 1 is not available, or is economically unfeasible, then the Association shall obtain alternate insurance which provides, as nearly as possible, such coverage.

Section 3. Additional Insurance by Owner. The Association is not obligated to procure liability insurance for any individual Owner or resident. Every Owner and resident is encouraged to insure his or her Lot and personal property against loss. Additionally, every Owner and resident is encouraged to carry Comprehensive Personal Liability Insurance. Insurance procured by the Association does not cover many perils and liabilities individual Owners and residents may incur. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to the Association. Owners are encouraged to procure Loss Assessment Coverage as part of their personal insurance.

Section 4. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article, Section 1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 5. Earthquake Insurance.

(a) The Association may, but shall not be required to, obtain earthquake insurance. The Association, Directors and/or manager shall not incur any liability for the failure to obtain or maintain earthquake insurance or an earthquake reserve account. The Board may periodically submit to the Owners the question of whether or not to obtain earthquake insurance. That may be submitted in the form of a vote to increase Assessments to cover such cost.

(b) After consultation with the Association's certified public accountant and/or counsel, at its discretion and/or in conjunction with a vote of the Members, the Board may establish and maintain an earthquake reserve fund which shall be accounted for in the same manner as other reserve accounts. Such funds may be in conjunction with or in lieu of earthquake insurance. They may also be used for upgrading structural components.

(c) The cost of the deductible(s) for an earthquake loss shall be borne equally by all ownership interests.

ARTICLE IX

DAMAGE AND DESTRUCTION

Section 1. Destruction of Common Area. If any portion of the Common Area is damaged or destroyed by fire or other casualty all insurance proceeds shall be paid into an insurance trust fund, to rebuild or repair such Common Area facilities generally in accordance with the original design.

If the insurance proceeds are insufficient to pay all of the costs of repairing and rebuilding, the Board shall levy a special Assessment on all Owners to make up any deficiency.

Section 2. Destruction of a Lot. Subject to the decision of the Board of Directors of the Association, and to the provisions of this Article, each Owner shall have the obligation to rebuild and restore the residence and other improvements on his or her Lot damaged or destroyed (by fire or other casualty) substantially to its appearance and condition immediately prior to the casualty loss.

ARTICLE X

MORTGAGE PROTECTION

Section 1. Inconsistent Provisions. In the event any provision of this Article is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article shall control.

Section 2. Notice of Default. The Mortgagee of any Lot, by written notice to the Association, may request and be thereby entitled to receive, written notice of any default which is outstanding for sixty (60) days or longer, by the Owner of such Lot in the performance of his or her obligations under this Declaration, or under any provision of the Bylaws of the Association or the Rules and Regulations adopted by the Association from time to time.

Section 3. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action, exercise of a power of sale or acceptance of a deed or assignment in lieu of foreclosure.

Section 4. Assessment and Other Balances Due. Any Mortgagee who acquires title to a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale shall acquire such title free of any claims by the Association for unpaid Assessments or charges against the Lot which have accrued prior to the time such Mortgagee acquires title to the Lot; provided, however, this exception shall not be applicable to any claim for Assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due Assessments upon such Lot. The sale or transfer of title to a Lot by deed or assignment in lieu of foreclosure, or any other voluntary conveyance of title, shall not relieve an Owner or his or her grantee from the liability for any Assessments which became due prior to such sale or transfer, nor relieve such Lot from a duly recorded lien for any unpaid prior Assessments.

Section 5. Default Payments and Reimbursements. Any Mortgagees, after at least ten (10) days prior notification to the Association of the items to be paid and the failure of the Association

within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

Section 6. Lender Cooperation. For any lender acquiring a security interest in a Lot subsequent to the recording of these CC&R's, this provision shall apply. If the Association seeks approval of some action regarding a specific Lot, and has so notified the lender, and fails to get a timely response (within 14 days), the lender will be presumed to have approved the action. Any related lender fees shall not be chargeable to the Association.

ARTICLE XI

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall or other structure shall be erected or maintained, nor shall any exterior addition to or change or alteration be made in the appearance of any structure or landscaping located upon any Lot, without prior written approval of the Association. The Association may require plans and specifications showing the nature, kind, color, shape, height, materials and location of the change as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve, disapprove or request additional information on all submissions within forty-five (45) days of submission.

Section 2. Architectural Committee. The Architectural Committee, if any, shall be composed of three (3) Members appointed by the Board. If a decision on an application has been rendered by the Architectural Committee, there shall be a right of appeal to the Board. The determination of the Board shall be final. Members of the Architectural Committee shall not receive any compensation for services rendered. All Architectural Committee members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Committee functions. If there is no Committee, the Board shall function in this role.

Section 3. Architectural Guidelines. Subject to Board review and approval, the Architectural Committee may unanimously vote to adopt guidelines to be used to address architectural alterations.

Section 4. Deemed Approval. In the event that the Architectural Committee fails to act upon any application for approval within forty-five (45) days of the date upon which all of the required documents are filed with the Association, the applicant may deliver a written demand for action to the Chairperson of the Committee and to the President of the Association. The demand shall recite the date upon which the documents were submitted and shall demand that the Association either approve or disapprove the application. If the Association fails to approve or disapprove the application within fifteen (15) days of the date of service of the demand, approval shall be deemed

granted. Nevertheless, no such "deemed approval" shall limit the right any other Owner may have under this Declaration or otherwise with respect to the proposed alteration.

Section 5. Non-Waiver. Approval of any application or alteration shall not be deemed a waiver of any right to deny approval of any similar application or alteration.

Section 6. Liability. Neither the Board nor the Architectural Committee shall be liable to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

Section 7. Architectural Enforcement.

(a) **Notice and Opportunity for Hearing.** If the Association has determined that an Owner is not in compliance with the architectural guidelines, then the Association shall send notice of such noncompliance to the Owner. The notice of noncompliance shall include a specific description of the architectural violation, as well as a proposed remedy and/or course of action. The Owner may comply, or request a hearing. Any hearing shall be upon such reasonable terms as the Association may impose. For purposes of this section, noncompliance includes, but is not limited to, failure to obtain Association approval, failure to follow the approved plan, failure to comply with architectural guidelines, and/or failure to properly maintain improvements.

(b) **Determination.** At the hearing or when the matter is otherwise addressed by the Association, if the Association finds that there is no valid reason for the continuing noncompliance, the violation shall be deemed a continuing nuisance. The Association may require the Owner to remedy or remove the same.

(c) **Association Options for Continuing Nuisance.** If the Owner does not comply with the Association's ruling within such period specified or within any extension of such period as the Association, in its discretion, may grant, the Association may (1) remove the noncomplying improvement, (2) remedy the noncompliance, or (3) record a Notice of Non-Compliance against the property, which shall also be conclusive as to all Owners and any successors in interest. A Notice of Non-Compliance in this context is a document recorded in the chain of title. It gives notice of the nuisance to all who may acquire an interest in the property and further notices that the Association has reserved the right to take future action against the property and/or Owner to abate the nuisance. The Association shall provide the Owner with a copy of any such recorded Notice of Non-Compliance. The costs of any such action(s) shall be assessed against the Owner as a Reimbursement Assessment. These powers of enforcement shall be in addition to the general enforcement provisions of this Declaration.

Section 8. Notice of Record. The Association shall have the right to record with title to a Lot an Architectural Notice to convey to any prospective or future Owner, the status of (i) an architectural variance, or (ii) an architectural agreement which may alter Owner and Association

responsibilities from those otherwise provided in this Declaration. The Association shall provide the Owner with a copy of any such recorded Notice.

ARTICLE XII

ENFORCEMENT OF GOVERNING DOCUMENTS

Section 1. Violation. A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. Any activity or condition which constitutes a public or private nuisance shall also be deemed a violation. If the detrimental effect of a violation continues for additional days, discipline imposed by the Association may include one component for the violation and, according to the Association's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to mitigate, repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible party.

Section 2. Jurisdiction. The Association shall have jurisdiction over (a) any Person on the Property or with rights in the Property and (b) any real and/or personal property. Said jurisdictional authority shall be subject to the terms, conditions and safeguards provided in the Governing Documents.

Section 3. Enforcement Options. In the event of a breach or violation of any of the Governing Documents by any Person, the Board, for and on behalf of all other Members, may enforce compliance with the Governing Documents through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including, but not limited to, the following:

(a) **Suspension of Rights.** The Board may suspend voting rights or the right to use Common Area facilities.

(b) **Fines.** The Association may implement schedules of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as illegally parked vehicles). If such a fine policy and schedule is adopted by the Association, the Association shall distribute it to each Member, by personal delivery or first-class mail. The Board may levy a reasonable fine in accordance with the Association's fine policy and schedule. In imposing any fine, the Association, at its sole discretion, may choose to suspend some or all of the fine for a period of time pending compliance with a directive of the Association.

(c) **Alternative Dispute Resolution (ADR).** In the event of a dispute between Owners (or residents), the parties shall comply with the mandatory ADR provisions of Civil Code section 1354 or such other form of ADR as may be agreed upon.

(d) **Legal Action.** Recognizing the importance of preserving status quo in the Plum Island neighborhood is an important goal of this Declaration. This includes the preservation of aesthetics and the quiet enjoyment of each residence. With the exception of nonpayment of any

Assessment, the recovery of dollar damages for any violation of the **Governing Documents** is an insufficient remedy. Enforcement of the **Governing Documents** against any **Owner** or resident may be undertaken by appropriate legal proceedings instituted by any **Owner**, the **Association**, or both. Legal proceedings may include the following:

- (1) an action for mandatory injunction (a court order or judgment which requires someone to do something);
- (2) an action for prohibitory injunction (in which the court prohibits specified behavior);
- (3) an action for declaratory relief (such as interpretation of any provision of the **Governing Documents**); and/or
- (4) A claim for damages, including prospective costs and costs actually incurred in obtaining compliance.

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

(e) **Self Help.** The **Association** shall have the right to enter any **Lot** to gain compliance with the **Governing Documents**, including but not limited to the following:

(1) **Maintenance, Repair and Replacement.** If the **Association** reasonably finds a **Lot** requires maintenance, repair or replacement of any component or condition for which the **Owner** is responsible, the **Board** may direct the **Owner** to perform the work and if the **Owner** fails or refuses to do so, the **Association** may utilize these provisions, and cause the work to be performed. The **Association** may collect the cost by adding it to the **Assessment** for that **Lot** and collecting it in the same manner as a **Reimbursement Assessment**.

(2) **Removal of Nuisance.** The **Association** shall have authority to enter a **Lot** to cause the removal of a nuisance from the **Property**. This power does not relieve the **Association** of its duty to comply with the due process and notice requirements of the **Governing Documents**.

(f) **Imposition of Reimbursement Assessment.** The **Association** may levy a **Reimbursement Assessment** as provided for in Article IV, Section 1(c) hereof.

(g) **Referral to Governmental Agency.** The **Association**, in its sole discretion, may refer any enforcement action to the appropriate governmental agency with jurisdiction, such as the police department, fire department, health department or other proper agency.

(h) **Recording with Title.** The **Association** may cause to be recorded with title to the offending **Lot**, a **Notice of Non-Compliance**. Such document shall constitute notice of a continuing nuisance and/or that the property is security for payment of damages and/or **Reimbursement Assessments** and shall be binding on all ownership interests of the **Lot** and their

successors in interest. A copy of any such notice shall be provided to the Owner identified in the Association's records.

(i) Notices to Mortgagees. If any Owner is in default under any provisions of the Governing Documents, and such default is not cured within thirty (30) days after written notice, the Association may notify the Owner's Mortgagee of record of such default and of the fact that said thirty (30) day period has expired.

Section 4. Implementation. There are three different procedures that the Association may use to assure that actions to enforce the Governing Documents are done in a fair and reasonable manner. Each provides the party charged with a violation with an opportunity to be heard.

(a) The Association Sets a Hearing Date. The Association gives notice that a hearing will be conducted fifteen (15) or more days after the notice is conveyed.

(b) The Party Requests a Hearing Date. The Association gives notice of the violation and the sanction that will be automatically imposed (fifteen (15) or more days after the notice is conveyed) - unless a hearing is requested by the party. Such a request for hearing must be made within ten (10) days of the notice; this limitation should also be set forth in the notice itself. If a hearing is timely requested, imposition of any sanction should be suspended and the hearing set for not less than fifteen (15) days from the date of request.

(c) Pressing Circumstances. Some circumstances may justify immediate action, such as:

- (1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners;
- (2) a traffic or fire hazard;
- (3) a threat of material damage to, or destruction of property; or
- (4) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as parking violations).

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

(d) Due Process Generally.

(1) Findings of Fact and Determination. During the hearing, after the hearing or when the matter is otherwise addressed by the Association, any action by the Association shall be supported by written findings of fact. If any sanction is imposed by a hearing body other than the Board, the findings of fact shall also include notice of right to appeal to the Board.

(2) Right to Appeal. The Board may adopt procedures for appeals which generally comport with the provisions of Section 4. The determination of the Board shall be final.

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

Section 5. Notices.

(a) Content. Notices and requests must be in writing. Notices from the Association shall include at a minimum, the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation and a reference to the relevant Governing Document provision.

(b) Conveying. Notices and requests may be given by any method reasonably calculated to give actual notice. If the notice or request is given by mail, it shall be sent by first-class and/or certified mail. If the Association uses the mail, it may send such notice to the last address of the Person shown in the records of the Association.

Section 6. Miscellaneous.

(a) Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative. The exercise of any right(s) or remedy(ies) shall not affect the exercise, at the same or at different times, of any other rights or remedies for the same or any different default or breach or for the same or any different failure of any Member or others to perform or observe any provision of this Declaration.

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

(c) Rules re: Disciplinary Proceedings. The Association shall be entitled to adopt rules and/or policies that further the efficient conducting of disciplinary proceedings. Such rules and/or policies shall form a part of the Governing Documents.

(d) Noncompliance with Procedure. Failure by the Association to technically comply with these procedures, or any rules or policies adopted, shall not be fatal to the process so long as there is no prejudice to the Person who has been charged with a violation. Appearance at a hearing shall constitute a waiver of any defect in notice.

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

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Severability. Invalidity of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration and the remaining provisions shall remain in full force and effect.

Section 2. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Planned Development.

Section 3. Term of Declaration. The provisions of this Declaration shall continue and be effective until January 1, 2006, after which date this Declaration shall be automatically extended for successive periods of ten (10) years unless otherwise amended. This Declaration may be amended as provided below.

Section 4. Amendment. This Declaration may be amended by . approval of Owners holding sixty percent (60%) of the total votes. (Based on 73 Lots, this is 44 votes.) Said amendment shall be effective upon recordation in the Office of the County Recorder of the County of San Mateo. Notice of approval shall be given to all Owners but, at the Board's discretion, need not include the full document previously submitted and voted upon.

Section 5. Gender, Number, and Captions. As used herein, the singular shall include the plural and the masculine shall include the feminine. The titles and captions are not an integral part and shall not affect the construction or interpretation of any provision.

Section 6. Conflicts. In the case of any conflict between the Bylaws and this Declaration, this Declaration shall control. In the case of any conflict between the Articles and this Declaration, this Declaration shall control.

Section 7. Notices. Notices and requests must be in writing. Notices and requests may be given by any method reasonably calculated to give actual notice. If the notice or request is given by mail, it shall be sent by first-class and/or certified mail. If the Association uses the mail, it may send such notice to the last address of the Person shown in the records of the Association.

Section 8. Variances. The Board may, upon unanimous approval, allow reasonable variances and adjustments of this Declaration in order to overcome difficulties and prevent unnecessary hardships in the application of these provisions. However, such variances shall only be granted

which conform to the intent and purposes of this Declaration. Further, in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements within the Property. The Board may, in its sole discretion, impose limitations on any variance granted, including terms, conditions and duration. Where notice of a request for a variance has been given to Members potentially affected and a Member fails to object (according to the terms of the notice), that Member shall be barred from later contesting the decision of the Association. A written record must be kept of all such requests and proceedings. Failure to do so shall create a presumption that this section does not apply to any issue or dispute.

Section 9. Member Responsibility. Each Member shall be liable to the Association for any damage to the Common Areas or areas which the Association must maintain, repair or replace caused by the conduct (including negligence or willful misconduct) of the Member or his or her family, guests, invitees or lessees. Each Member shall indemnify the Association for any third party claim arising out of such conduct.

Section 10. Indemnification by Association of Directors and Officers. The Association shall, to the fullest extent permitted by law, protect, defend and indemnify its past and present Directors and Officers from potential liability for their activity while acting in good faith and engaged in Association business. Such protection may include that provided for in (a) the Association's insurance, including the liability insurance in the case of damage to person or property, and/or (b) the Corporations Code, specifically section 7237. In the event that any claim of indemnification is made to the Association by such individual, the Association shall, in a timely way, tender the claim to its broker and/or insurance carriers. To the extent that the individual seeking indemnification has exposure to any uninsured loss, the Association shall also submit the matter to its counsel for a legal opinion as to Association obligations.

Section 11. Advancement of Expenses. To the fullest extent permitted by law, the Association shall, consistent with Corporations Code section 7237(f), advance all costs of defense of an accused Officer or Director.

Section 12. Limitations on Personal Liability of Individual Directors/Officers.

(a) No action shall be brought against an individual Director or Officer unless expressly permitted by the provisions of Civil Code section 1365.7.

(b) No suit or action against a Director or Officer of the Association personally shall be sustainable in any court unless commenced within twelve (12) months of the date claimant knew or should have known of alleged misconduct and/or the inception of damage or injury.

Section 13. Davis-Stirling Common Interest Development Act. Given that the statutory law applicable to homeowner associations is frequently amended by the legislature, and given the Association's desire to keep the provisions of the Declaration consistent with applicable statutory law, the Association shall have the power to use an Exhibit which reflects mandatory requirements of Davis-Stirling (see attached Exhibit B). The Association may periodically substitute a new Exhibit

hereto (without a vote of the Owners) which conforms to the then applicable provisions of the Davis-Stirling Common Interest Development Act. Any such new Exhibit shall be (1) recorded in the Official Records of San Mateo County and cross-reference these CC&Rs and (2) distributed to all Owners.

CERTIFICATE OF AMENDMENT

The Association desired to make substantial changes to the CC&Rs pursuant to the amendment provisions therein, and on 9.23, 1997 voted and approved the language of said changes.

This Amended Declaration of Covenants, Conditions and Restrictions incorporates the amendments, together with preexisting language and supersedes the original CC&Rs which was recorded on May 9, 1977, as Document No. 16495AL, in the Official Records of San Mateo County, California.

The undersigned declare, under penalty of perjury, under the laws of the State of California, that the matters set forth in this Amendment are true and correct of their own knowledge. Executed at Poser City, California on August 20, 1998.

Mary E. Brewer
President

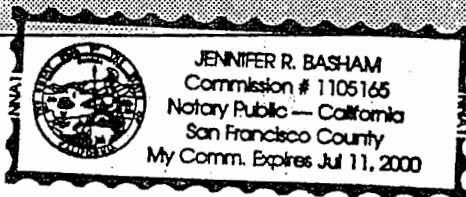
Secretary: [Signature]

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

On AUGUST 20, 1998, before me, JENNIFER R. BASHAM Notary Public, personally appeared MARY A. BREWER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jennifer R. Basham
Notary Public



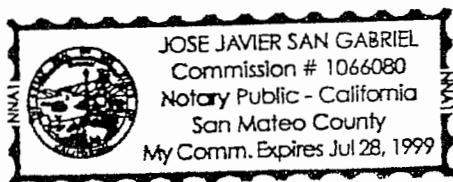
nv/plumccr.416

Feingold & Youngling, PLC
810 Fifth Avenue, San Rafael, California 94901
(415) 454-1090

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Mateo
On Aug. 21, 1998 before me, JOSE J. SAN GABRIEL
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared ANITA I. TOBIN
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal

[Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

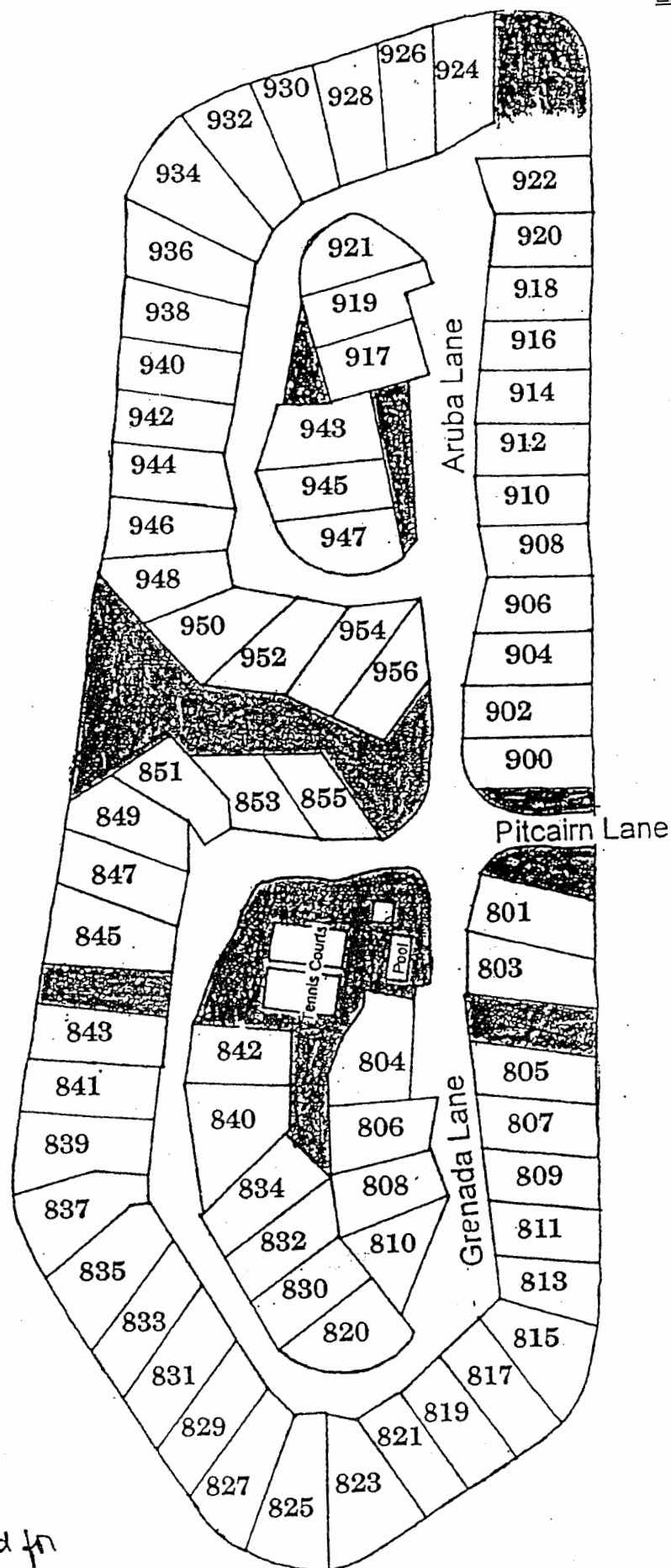
Signer's Name: _____

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

Signer Is Representing: _____

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OF SIGNER
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Plum Island Homeowners Association



This map provided for reference only, not as part of any legal description.

**EXHIBIT B TO CC&Rs
OF PLUM ISLAND HOMEOWNERS ASSOCIATION**

As Adopted August 20, 1998

(Note: This Exhibit may be periodically superseded
by later exhibits reflecting changes in the law)

This exhibit to the Declaration of Covenants, Conditions and Restrictions of Plum Island Homeowners Association is hereby incorporated by cross-reference into the Declaration (as authorized by Article XIII, Section 13).

Section 1. Financial Records and Reporting. The Association shall prepare and distribute to all its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) is of the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point bold type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) A summary of the association's consistent with Civil Code Section 1365(e).

Section 2. Operating and Reserve Accounts.

(a) Unless the governing documents impose more stringent standards, the board of directors of the association shall do all of the following:

(1) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(2) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(3) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(4) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(5) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(b) The signatures of at least two persons, who shall be members of the association's board of directors, or one officer who is not a member of the board of directors, shall be required for the withdrawal of moneys from the association's reserve accounts.

(c)

(1) The board of directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(2) However, the board may authorize the temporary transfer of money from a reserve fund to the association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the board has made a written finding, recorded in the board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the common interest development, temporarily delay the restoration. The board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is subject to the limitation imposed by Section 1366. The board may, at its discretion, extend the date the payment on the special assessment is due. Any extension shall not prevent the board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

(d) When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the association shall notify the members of the association of that decision in the next available mailing to all members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the association at the association's office.

(e) At least once every three years the board of directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the association is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of the common interest development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association which excludes the association's reserve account for that period. The board shall review this study annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

The study required by this subdivision shall at minimum include:

(1) Identification of the major components which the association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1) during and at the end of their useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(f) As used in this section, "reserve accounts" means moneys that the association's board of directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(g) As used in this section, "reserve account requirements" means the estimated funds which the association's board of directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

(h) This section does not apply to an association that does not have a "common area" as defined in Section 1351.

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