

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION
(As Restated in 2023)**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION
(As Restated in 2023)**

This Declaration of Covenants, Conditions and Restrictions of the RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION ("**Declaration**" or "CC&Rs") is a successor revised version of the now superceded Declaration entitled "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION (As Amended in 1995)" which was recorded in the office of the Marin County Recorder on February 10, 1997 as Document No. 97-006804, and as may have been subsequently amended (hereinafter "Former Declaration").

RECITALS

1. Legal Description. This **Declaration** governs all of the real property and **Improvements** located in the County of Marin, State of California, and described as both:

- (a) All that property set out in the Grant Deed filed June 25, 1943 in Volume 449 of Official Records at Page 10, Marin County Records; and
- (b) where the **Owners** of specific parcels therein have agreed to bind their property to this **Declaration** by recorded instrument cross-referencing and incorporating by reference the Former Declaration and/or this **Declaration**.

2. The Subdivision. The real property described above is within a subdivision as defined by the provisions of the California **Davis-Stirling Act** and commonly known as the **Rancho Santa Margarita Subdivision**. **Owners** of parcels in the **Subdivision** share interconnected easement rights in roadways and related improvements that service their respective parcels in the **Subdivision**. Responsibility for the **Common Roadway** (as described below) has been accepted by the **Association**. This is a road association.

3. The Association.

3(a) At the time the **Subdivision** was created, there was no requirement of an owners association and joint owners of the easement rights relied on the voluntary cooperation of neighbors and Civil Code §845 to provide for roadway management and contribution toward costs incurred. Lack of unanimity in the support of various work necessitated various litigation so the Court could apportion the cost of the maintenance, repair and replacement of roadway and easement components. To make the process more efficient and effective, the Rancho Santa Margarita Property Owners Association was formed around 1982. While the majority of then **Owners** joined and agreed to bind their property (through equitable servitudes and covenants, conditions and restrictions) into the future, some did not. Thereafter, the **Association** acted as a representative of those **Owners** who had become **Members** and acted on behalf of all **Owners** to maintain those **Common Roadways** accepted.

3(b) There are 54 separate parcels within the **Rancho Santa Margarita Subdivision**. At the time of recording of this **Declaration**, 47 parcels and respective **Owners** are **Members** of the **Association**, while the remaining 7 parcel **Non-Member Owners** have not agreed to be bound by this **Declaration**. (See **Exhibit A.**)

4. This Restated Declaration. The **Association** determined that its Former Declaration is outdated. Therefore the **Members** have approved and recorded this **Declaration** which supersedes the Former Declaration. The parcels contained within the **Subdivision** and such future parcels that may be created by further resubdivision or annexation, share a community of interest, purposes and needs in, among other matters, the need to provide for the maintenance, repair, improvement and administration of the **Common Roadways**, and to provide where needed, or as desired, for fire protection, security, garbage disposal and other municipal-like services. It continues to be the intention of **Members** to, by this **Declaration**, provide for the administration of the common needs and services of the **Members** and that these covenants and servitudes which will run with the land and be binding on all **Members**, and their successors in interest, heirs, assigns and transferees.

ARTICLE I DEFINITIONS

The following terms, when shown in bold type throughout this **Declaration**, shall have the following meanings:

Section 1.1 "Assessment" means an Annual Road Maintenance Charge or Major Roadwork Charge made or assessed against an **Owner** and his or her parcel as ordered by the Court pursuant to Civil Code §845. In addition, **Members** are also subject to an Annual Management Charge, Annual Road Reserve Charge and/or Reimbursement **Assessment** made or assessed against a **Member** and his or her parcel in accordance with the provisions of **Article IV** of this **Declaration**. **Assessments** shall include the costs to implement the collection and expenditure of earmarked funds. The terms charge and **Assessment** shall be synonymous.

Section 1.2. "Association" means the Rancho Santa Margarita Property Owners Association, a California nonprofit mutual benefit unincorporated association, its successors and assigns.

Section 1.3. "Board" or "Board of Directors" means the governing body of the **Association**.

Section 1.4. "Bylaws" means the **Bylaws** of the **Association**, as may be amended or restated from time to time.

Section 1.5. "Common Area" means all of the real property owned or controlled by the **Association**, including mutual or reciprocal easement rights, for the common use and enjoyment of the **Owners**, and more particularly described as the **Common Roadway** and any trail easements or licenses:

Section 1.6. "Common Roadway": The **Common Roadway**, is as set forth in chain of title to affected parcels and is generally as follows:

Camino Margarita: that roadway commencing at Lucas Valley Road and running approximately 1.1 miles to the junction with Los Pinos Road.

Los Pinos: that roadway, commencing at the junction with Camino Margarita, including the bridge that connects the two, and running approximately 1.1 miles to Parcels 121280-11 and 121-280-08 at the "yellow gate."

Other Roadways: those other roadways (if any) that may be later included in accordance with **Article V V** of this **Declaration**.

Section 1.7. "Davis-Stirling Common Interest Development Act" means that set of statutes governing Common Interest Developments which starts with California Civil Code §4000 and is also referred to as the **Davis-Stirling Act** or the **Act**.

Section 1.8. "Declaration" means this restated **Declaration** and any further revisions or amendments. The term **Declaration** is interchangeable with the term "Covenants, Conditions and Restrictions" or "CC&Rs".

Section 1.9. "Down The Road (DTR) Charge" means charges shared by each and every parcel **Owner** proportionally, calculated based on the length of **Common Roadway** used (from the starting point at Lucas Valley Road to the **Owner's Driveway**), plus a two hundred percent (200%) surcharge for each parcel(s) improved with a **Dwelling**.

Section 1.10. "Driveway" means a road or other main path of access that services a single parcel or **Dwelling** and originates at the **Common Roadway** or a **Spur**.

Section 1.11. "Dwelling" means a private, single family residence or other living quarters.

Section 1.12. "General Notice" describes the delivery of communications from the **Association** to the membership as a group, pursuant to Civil Code §4045 and Article VI of the **Bylaws**. **General Notice** includes methods such as posting the printed document on the **Association's** website (if any) and/or in a prominent place at the **Property** designated for such notices. It can also be by inclusion in a billing statement or newsletter. Alternatively, **General Notice** may be by the **Preferred Method of Delivery**, if specifically requested by the **Member**, or if not, at the **Association's** option.

Section 1.13. "Governing Documents" means collectively this **Declaration**, the **Bylaws**, Articles of Association, rules, and any policies or guidelines approved and adopted by the **Board**, and any amendments to such documents.

Section 1.14. "Member" means an **Owner** who has directly, or by a predecessor, agreed that **Owner's** parcel shall be bound by this **Declaration**. The **Board** may adopt a policy defining "**Member**" for purposes of voting and Director qualifications, to address title not being held by person or trustee (such as a corporation or partnership).

Section 1.15. "Non-Member Owner" means an **Owner** who is not subject to the **Governing Documents**, but is subject to the **845 Judgment**.

Section 1.16. "Owner" means the owner of record in the chain of title, whether one or more **Persons** or entities, having a recorded fee simple title to or undivided fee interest in any parcel within the **Rancho Santa Margarita Subdivision**, whether or not a **Member** of the **Association**.

This includes contract purchasers, but excludes **Persons** having any interest merely as security for the performance of an obligation. If title is in the name of a Trust, each Trustee named on title is an **Owner** of record.

Section 1.17. "Person" means a natural person, trustee, corporation, partnership, or legal entity. This term includes any **Owner, Member**, a family member, tenant, resident, guest or invitee.

Section 1.18. "Preferred Method of Delivery" describes the transmittal of notices, documents or other communications from the **Association** to an individual **Member** pursuant to Civil Code §§4040 and 4041 and Article VI of the **Bylaws**. **Preferred Method of Delivery** means a **Member's** preference as relayed to the **Association** and may include a mailing address and/or valid email address. It may also include secondary mail and/or email addresses. It may include such contact information for the **Member's** legal representative.

Section 1.19. "Rancho Santa Margarita Subdivision" or "Subdivision" means all parcels which are (a) benefitted by easement rights for the use of either or both roadways known as Camino Margarita and Los Pinos Road, (b) to the extent those roads have been accepted as **Common Roadways** by the **Association** and (c) where those parcels are within the area depicted as **Unit 1** or **Unit 2** of **Exhibit A**. This Exhibit may be amended from time to time to reflect resubdivision, annexation or other acceptance by the **Association**.

Section 1.20. "Spur" means any access road originating from a **Common Roadway** and serving more than one parcel or **Dwelling**.

Section 1.21. "Unit" refers to groups of parcels located in the **Subdivision**, which may also be referred to as phases.

Unit 1 refers to those parcels listed on **Exhibit A** as **Unit 1**.

Unit 2 refers to those parcels listed on **Exhibit A** as **Unit 2**.

Section 1.22. "Voting Power of the Members" means the ballots that can be cast by all **Members** of the **Association**.

Section 1.23. "Voting Power of the Benefitted Owners" means the ballots that can be cast by the group of **Owners** whose **Driveways** lie beyond a specific point of repair.

Section 1.24. "Voting Power of all Owners" means the ballots that can be cast by all **Owners** of parcels in the **Rancho Santa Margarita Subdivision**.

Section 1.25. "Voting Power of the Unit 1 Members" means the ballots that can be cast by all **Unit 1 Members**.

Section 1.26. "Voting Power of the Unit 2 Members" means the ballots that can be cast by all **Unit 2 Members**.

Section 1.27. "845 Action or 845 Judgment" means that amended judgment entered on or about September 17, 1985 in Marin Superior Court Action No. 112648 and as modified or supplemented.

ARTICLE II

EASEMENT RIGHTS AND OBLIGATIONS OF OWNERS

Section 2.1. Roadway and Utility Easements. Each **Owner** of identified parcels in Rancho Santa Margarita by acquisition of an ownership interest in the **Subdivision** receives a variety of easements including, as necessary to serve the parcel of each **Owner**, easements for roadway and utilities. The roadway easements include the roads known as Camino Margarita and Los Pinos. Generally upon the acquisition of the **Owner's** title, the **Owner** acquires fee title to the center line of the roadway.

Section 2.2. Cost of Maintaining Easements. The cost of maintaining the easements in repair is required to be shared by each **Owner** of the easement, i.e., the **Owners** of the parcels of land on which the easement exists pursuant to terms of agreement and/or as may be mandated by a court under the provisions of Civil Code §845. This **Declaration** constitutes such an agreement among the **Members**.

Section 2.3. Association as Agent. **Owners** who are **Members** appoint the **Association** to act as their agents to collect and expend all sums due from **Non-Member Owners** for the maintenance of easements accepted by the **Association**.

Section 2.4. Trail Easement(s) and License(s).

2.4(a) The **Association** has the authority to accept trail easement(s) and license(s) for the benefit of all **Members**, which grant private access for pedestrian, bicycling and equestrian use by **Members**. **Association** authority requires approval of the **Board** and a majority of the **Voting Power of the Members**. Any such trail easement and/or license shall be considered **Common Area** of the **Association**, in accordance with Civil Code §4095.

2.4(b) In July of 2008, the **Association** accepted three trail easements as set forth in the Grant of Private Easement recorded on June 5, 2009 as Document No. 2009-0031200.

2.4(c) Unless otherwise provided by the Grant of Easement or License Agreement, the **Association** may relinquish and extinguish any previously accepted trail easement or license with the approval of the **Board** and a majority of the **Voting Power of the Members**.

Section 2.5. Roadside Vegetation. **Owners** are responsible for all aspects of maintenance, including pruning and/or abatement of vegetation and trees alongside the road at their parcels. **Owners** are also responsible to prune the overhanging branches in accordance with Fire Department limits, as well as for any damage caused by roots to the nearby road. All removed debris must be properly disposed of by the **Owner**.

Section 2.6. Drainage. The **Association** has limited responsibility for drainage at the road itself. **Owners** are responsible for all other aspects of drainage on their parcels, including proper discharge or transition at the roadway.

ARTICLE III

AUTHORITY OF THE ASSOCIATION

The **Board** shall have the authority to conduct the business of the **Association**, except as may be limited by the **Governing Documents** or the law. Where appropriate or necessary, the **Board**, in its sound discretion and for the benefit of all **Members**, shall generally enforce the provisions of the **Governing Documents** in the manner it deems most appropriate. In addition to those powers and duties set forth in the **Bylaws** or elsewhere in this **Declaration**, the **Board** shall also have the following duties and powers:

Section 3.1. Roadways and Trails: The **Association** shall cause the maintenance, repair and replacement of roadway and/or trail easements or licenses. This shall include ancillary work related to drainage, visibility, weed and vegetation abatement, as more fully described in **Article IV**.

Section 3.2. Spur Charges. The **Association** may, at its sole discretion, undertake maintenance, repair and/or replacement of **Spur** road components if:

3.2(a) The **Member(s)** and/or **Non-Member Owner(s)** serviced by the **Spur** submit(s) a proposal to the **Association** specifying the nature and estimated cost of the work,

3.2(b) The **Members** and/or **Non-Member Owner(s)** benefitting from the proposed work shall tender (in advance of any cost being expended) the full amount of the estimated cost of said work to the **Association** and shall agree in writing to be responsible for excess costs of the work should there be any. Unused funds shall be returned to the **Members** and/or **Non-Member Owner(s)** who contributed them in an equitable manner. Any excess costs incurred may be levied and collected from **Members** as a Reimbursement **Assessment** on the benefitted parcels. Non-Member Owner(s) must pay for any such excess costs in advance of completion of the work,

3.2(c) The **Board** determines that the proposed scope of work will not increase any costs to other **Members**,

3.2(d) The **Association** shall incur no liability for the work and shall have no ongoing or future responsibility for maintaining the work, and

3.2(e) All **Members** and/or **Non-Member Owners** benefitted agree to such additional terms and conditions as the **Association** may require after the proposal for the work is submitted in writing.

Section 3.3 Professional Services: The **Association** may, as deemed prudent by the **Board**, procure and pay for professional services, including management, reserve, engineering, legal and accounting.

Section 3.4. Other Authority of the Board. The **Association** may acquire and pay for any other goods, materials, supplies, labor, services, maintenance, repairs, structural alterations, improvements, insurance, taxes or assessments or other charges which the **Board** is required authorized to secure or pay for pursuant to this **Declaration** or by law, or which in its opinion shall

be is reasonably necessary in the discretion of the **Board** for the convenient and appropriate operation of the Subdivision.

Section 3.5. Delegation of Powers: The **Board** may delegate its powers, duties and responsibilities to committees, officers or employees, including a professional managing agent who is subject to the direction and control of the **Board**. Any agreement for professional management shall be terminable with or without cause and without payment of a termination fee on thirty (30) days written notice.

Section 3.6. Rules:

3.6(a) Rule and Policy Making Power. Subject to the provisions set forth in the **Davis-Stirling Act**, including **Member** review, the **Board** may propose, enact, adopt and/or amend rules and/or policies of general application to the **Members** relating to the use of the **Common Roadways** by the **Members** and other **Persons**, including renters and guests. Such subjects may include provisions regarding parking, speed limits, vehicle weights, commercial vehicles, construction equipment or activity impacting the **Common Roadway**, and/or activities which might adversely affect the **Common Roadway** or its appearance or might inconvenience, or endanger the **Owners** or residents. The **Board** may adopt policies to address any omission, ambiguity or conflict in the provisions of the **Declaration**. The discretionary rules shall not, however, be in conflict or materially inconsistent with any applicable provision of the **Declaration**.

3.6(b) 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 VIII**.

Section 3.7. Represent the Association: The **Board** may act as the **Members'** representative in dealing with governmental and other entities, including the County and its entities and including the State (and the Department of Real Estate).

Section 3.8. Reserves: The primary purpose of reserves, which are only applicable to **Members**, is to have immediately available funds to initiate necessary or desirable work even when the ultimate costs or shares may not be certain at the outset. Reserve funds also serve to “even out” Annual Road Maintenance Charges for **Members** and decrease the need for levy of Major Roadwork Charges on **Members**. Note that **Member Assessments** are generally prospective according to a budget and estimated calculations. Non-Member **Assessment** obligations are calculated after completion of road work and allocated based on the applicable **DTR Charge**.

ARTICLE IV

ASSESSMENTS AND SCOPES OF WORK

Section 4.1. Assessments Generally. Road-related **Assessments** are subject to both the provisions of Civil Code §845 (and the related court Judgment(s)) and Civil Code §§5600-5650 of the **Davis-Stirling Act**. This article reconciles these two statutory authorities by combining the **Davis-Stirling Act** concepts of Assessments and superimposing the Down the Road Charge formulas provided by the Court in the **845 Action**. **Member Assessments** may also include trail easement or license-related charges which are also subject to Civil Code §§5600-5650. Each **Member**, by acceptance of a deed or other ownership interest, has and continues to covenant and

agree to pay **Assessments** to the **Association**, together with interest, late charges, costs, and legal fees, which shall be a charge on the parcels and may become a continuing lien upon the parcel against which each such **Assessment** is made. Each such **Assessment** and related charges 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 4.3** below.

4.1(a) Annual Management Charges and Limitation.

4.1(a)(1) Formula. The Annual Management Charge shall be calculated and levied equally among **Members** on a per parcel basis.

4.1(a)(2) Purpose. The Annual Management Charge shall be used to defray the costs of administration of the **Association**, which includes such matters as the payment of any tax levies, normal insurance costs, legal and accounting services, compliance with legislative administrative requirements, secretarial services and other like administrative costs.

4.1(b) Annual Road Maintenance Charge.

4.1(b)(1) Formula. The charges levied on all **Owners** for Annual Road Maintenance shall be calculated using the **Down the Road (DTR) Charge** formula.

4.1(b)(2) Scope of Work. Charges against the Annual Road Maintenance Fund will be for general road, culvert, and roadside maintenance and repairs. Road maintenance includes preservation of status quo in a routine and foreseeable way. It includes maintenance that may be planned for cyclically and implemented as part of the annual road plan deemed prudent by the **Board** after review of the engineers' maintenance recommendations. This type of work is common along the length of the road over time. Such maintenance may include, for example, repairing pot holes, asphaltic concrete overlays, crack sealing, slurry sealing, weed control, culvert cleaning, as well as replacement of reflectors and signage. Other examples include mitigation of pavement failure (removal of existing pavement and replacing with asphalt concrete) and small areas of asphalt overlay "to regain uniform roadway slope".

4.1(b)(3) Limitation. Pursuant to the **845 Judgment**, the Annual Road Maintenance charge billed to **Non-Member Owners** may not exceed \$10,000/year, or \$500 per job per site, or \$1,000/year per site. Costs in excess of these caps require the approval of seventy-five percent (75%) of the **Voting Power of Benefitted Owners**. Additionally, if there are Annual Road Maintenance Charges in excess of the budget, costs in excess of the approved budget require the approval of a majority of a quorum of the **Voting Power of the Members**, with a quorum defined as more than fifty percent (50+%).

4.1(c) Major Roadwork Charges. Major Roadwork may include extraordinary maintenance and/or necessary work over and above maintenance. This would include, for example, repaving, catastrophic repairs such as may be occasioned by landslide or road washout, installation of a new improvements to correct geotechnical conditions, addition of retaining walls, or installation of drilled piers. There shall be two categories for Major Roadwork Projects: (a) those that affect the entire Common Roadways, and (b) those that affect only a portion of the Common Roadways.

4.1(c)(1) Major Roadwork that Affects the Entire Roadway:

4.1(c)(1)(i) Formula. Charges for Major Roadwork affecting the entire roadway shall be calculated and levied using the **DTR Charge** formula. Major Road projects that uniformly affect the entire road, repaving, and which otherwise exceed the scope of work provided for under the Annual Road Maintenance Fund, shall be shared according to the formula provided for the Annual Road Maintenance Fund.

4.1(c)(1)(ii) Limitations. Pursuant to the **845 Judgment**, the charges billed to **Non-Member Owners** for Major Roadwork affecting the entire road requires the approval of seventy-five percent (75%) of the **Voting Power of all Owners**. Additionally, approval of a majority of a quorum of the **Voting Power of the Members**, with a quorum defined as more than fifty percent (50+%) is also required.

4.1(c)(2) Major Roadwork that Affects only a Portion of the Roadway.**4.1(c)(2)(i) Cost Allocation Formula:**

- **Members:** Five percent (5%) of the cost shall be shared equally by all **Members**. Ninety-five percent (95 %) of the cost shall be shared equally by all those benefitted **Members** (i.e., those **Members** whose Driveways are adjacent to and/or beyond the point of repair), plus a two hundred percent (200 %) surcharge for each parcel improved with a **Dwelling**.
- **Non-Member Owners:** The cost shall be based on the **DTR Charge** formula and allocated among those benefitted **Owners** (i.e., those **Owners** whose **Driveways** are adjacent to and/or beyond the point of repair).

4.1(c)(2)(ii) Limitations. Pursuant to the **845 Judgment**, the charges billed to **Non-Member Owners** for Major Roadwork affecting the a portion of the road requires the approval of seventy-five percent (75%) of the **Voting Power of the Benefitted Owners**. Additionally, approval of a majority of a quorum of the **Voting Power of the Members**, with a quorum defined as more than fifty percent (50+%) is also required.

4.1(c)(3) Borrowing From Reserves. General soil conditions in the area may cause periodic slippage which may directly or indirectly cause road costs to be incurred in locations not previously predicted. When soil slippage occurs at a particular site, the amount required to repair the damage may be "borrowed" from the Reserve Fund so the work can move forward expeditiously. The **Association** may then levy a Special **Assessment** to replace these expended Reserve Funds. Depending on the nature of the repair, this **Assessment** would be calculated using either the formula in **Section 4.1(c)(1)** or **4.1(c)(2)**.

4.1(d) Annual Road Reserve Fund. In accordance with the Reserve Study and/or engineering evaluation of the roadway, the **Association** shall calculate an annual Road Reserve Charge utilizing the Down the Road (DTR) Charge formula. Such charge shall be included in any Reserve contribution accounting and corresponding adjustments made to each **Member's** account as necessary.

4.1(e) Trail Charges. Costs related to the **Association's** interest in trail easements and/or licenses, shall be divided equally among all **Member** parcels.

4.1(f) Emergency Assessments. Where the **Board** determines an emergency situation exists as defined by statute, the **Board** may levy an Emergency **Assessment**, but only in accordance with Civil Code §5610 or any superseding provision of the California Civil Code which addresses **Assessments** necessary for emergency expenses.

4.1(g) Reimbursement Assessments.

4.1(g)(1) Definition. A Reimbursement **Assessment** is a charge against any **Member** (and/or tenant) and the **Member's** parcel. It may be levied by the **Board** under the following circumstances:

4.1(g)(1)(i) where a **Member**, guest or tenant has caused damage to **Common Area**;

4.1(g)(1)(ii) where there is a violation of the **Governing Documents** or other misconduct by any **Member**, or the tenants, guests, agents, employees, licensees, or invitees of a **Member** causing the **Association** to incur related costs.

4.1(g)(1)(iii) when a condition created or caused by a **Member** or **Member's** predecessor in interest has required or will require the **Association** to spend money (including incurring attorneys fees or other costs).

4.1(g)(1)(iv) under any of the following circumstances:

(1) if a fine or penalty has been imposed by a third party against the **Association** (for example, a government fine as a result of actions by **Member**);

(2) by mutual agreement between a **Member** and the **Association**.

4.1(g)(2) Implementation. Unless otherwise agreed between **Member** and **Association**, prior to levying a Reimbursement **Assessment**, the **Association** must provide the individual with due process pursuant to **Article VIII, Section 8.4**.

4.1(g)(3) Collection. A Reimbursement **Assessment** shall be due and payable to the **Association** when levied or at such later time as may be set by the **Board**. If a Reimbursement **Assessment** is levied and paid before all or any portion of the costs have been incurred by the **Association** and the amount paid exceeds the costs actually incurred, the **Association** shall promptly refund the excess to the **Member**. If actual costs exceed the amount levied but not yet paid, the **Association** shall notify the **Member** of the additional amount due and the **Member** shall reimburse the **Association** within 30 days. When a Reimbursement **Assessment** is levied, it may be asserted and/or collected in the same manner as regular **Assessments**, including a lien. Note however that non-judicial foreclosure only applies if it is to repair damage to **Common Area** or other "out-of-pocket" costs. Non-judicial foreclosure cannot be used to collect a penalty/fine.

4.1(h) Assessment Level Increases.

4.1(h)(1) Approval of the Board of Directors. Pursuant to Civil Code §5300, the **Board** may impose an increase in the Annual Management Charge, and/or Annual Road Maintenance Charge up to and including 20% greater than preceding fiscal year. The **Board** may also impose special **Assessments, such as Major Roadwork Charges**, which in the aggregate do not exceed 5% of the budgeted gross expenses of the **Association** for that fiscal year if the **Board** has complied with Civil Code §5300 .

4.1(h)(2) Approval of Members. If the **Board** seeks an increase over the discretionary (amounts listed in **Section 4.1(h)(1)** above, or if Civil Code §5300 has not been complied with, it must first obtain the approval of a majority of a quorum of **Members**. For purposes of this section, quorum means more than 50% of the **Members** of the **Association**.

4.1(i) Notice. The **Association** shall provide notice to **Members** of any change in **Assessments** not less than thirty (30) days nor more than sixty (60) days prior to the changed **Assessment** becoming due. Such written notice shall be delivered to **Members** by **Preferred Method of Delivery**.

Section 4.2. Enforcement of Assessments.

4.2(a) Delinquency. The **Association** shall adopt and distribute a collection policy which shall provide for the collection of **Assessments**, including the provisions set forth below. Unless otherwise set by the **Board**, **Assessments** levied pursuant to this **Declaration** are delinquent thirty (30) days after they become due. If an **Assessment** is delinquent, the **Association** may require payment of all of the following:

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

4.2(a)(2) a late charge not exceeding ten percent (10%) of the delinquent **Assessment**, or Ten Dollars (\$10), whichever is greater;

4.2(a)(3) interest on all sums imposed (including the delinquent **Assessment**, reasonable fees and costs of collection, and reasonable attorney's fees) at an annual interest rate not to exceed twelve percent (12%), commencing thirty (30) days after the **Assessment** becomes due.

4.2(b) Returned Checks and Other Charges. An **Owner** who issues a check to the **Association** which is returned for any reason shall pay a \$20.00 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 §1719, which is entitled "Treble Damages for Failure to Pay Amount of Dishonored Check." Additionally, **Owners** shall reimburse the **Association** for any insufficient funds or other costs incurred in Automated Clearing House (ACH) transactions.

4.2(c) Lien. The amount of a delinquent **Assessment**, plus any costs of collection, late charges and interest, shall be a lien on the **Member's** parcel from and after the time the **Association** causes to be recorded with the Marin County Recorder a Notice of Delinquent **Assessment**. Nevertheless, the **Association** may record a subsequent lien to update the amounts additionally due with the supplemental document relating back to the original date of recordation. An **Association** lien shall survive the sale or transfer of a parcel, except in the event of a foreclosure by a senior interest.

4.2(d) Non-judicial Foreclosure. The **Association** has the power to conduct non-judicial foreclosure in order to collect delinquent **Member Assessments**. Each **Member** hereby appoints as trustee the person designated by the **Association** as "trustee" in the Notice of Delinquent **Assessment**, or such substitute trustee as is designated pursuant to Civil Code §2924a. 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 §5675, or by judicial foreclosure. Each **Member** further grants to the trustee the power and authority to sell the parcel of any defaulting **Member** to the highest bidder to satisfy such lien. Note that a fine (i.e., a penalty unrelated to reimbursement of costs) may be the subject of a lien and/or judicial foreclosure, but, if alone, cannot be the basis for a non-judicial foreclosure.

4.2(e) Other Recourse.

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

4.2(e)(2) Further, the **Association** may exercise any and all legal rights it may also or otherwise have, including Civil Code Section 845 and/or the **845 Action**, to cause the collection of delinquent **Assessments**. This includes collection of amounts prospectively before costs are incurred and as provided for by Civil Code §845(c). The **Association**, acting on behalf of the **Members**, shall have the power to bid for the parcel at the foreclosure sale and to acquire and hold, lease, **Mortgage** and/or convey the same.

4.2(e)(3) Any debt of a *former Member* may be the subject of an assignment, sale or other transfer to a third party debt collector.

Section 4.3. Grantee Liability.

4.3(a) Voluntary Conveyance. Where a **Member** voluntarily conveys part or all of that **Member's** interest in a parcel, the **Person** acquiring the interest takes subject to all **Assessments** and charges (delinquent or not) pending or outstanding against the parcel at the time of the conveyance as well as costs of collection. Upon written request of an **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** parcel 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** parcel.

4.3(b) Conveyance by Foreclosure. In the event of a foreclosure of a first Mortgage by trustee sale, unless otherwise provided by law, the **Person** acquiring title, and his or her successors and assignees, shall not be personally liable for **Assessments** charged to such parcel which became due and payable prior to the acquisition of title by such acquirer. In lieu of a foreclosure by Trustee Sale, a first Mortgage holder, if the **Board** approves in writing, can accept a deed to a Mortgage holder entity in lieu of foreclosure that similarly relieves it of some or all of the delinquency that occurred prior to the deed in lieu of foreclosure.

4.3(c) Priorities. When a Notice of Delinquent Assessment has been recorded, such **Assessment** shall constitute a lien on the parcel 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 parcel from liability for the pro rata share of the annual or other **Assessment** that would otherwise be payable after the foreclosure.

4.3(d) Termination and Commencement of Assessment Obligations. This section addresses personal liability.

4.4(d)(1) When ownership changes occur:

- the transferring-**Member** shall be personally liable for any **Assessments** which are due and payable up to the time of transfer, and
- the receiving-**Member** shall be personally liable for any **Assessments** which are due and payable after acquisition of any form of ownership interest.

4.4(d)(2) Except as otherwise provided in **Section 4.4(b)**, a lien, and the **Association's** right to lien, survives a voluntary conveyance of a parcel.

4.4(d)(3) Special or Reimbursement **Assessments** may be subject to terms or conditions specified by the **Board**.

4.4(d)(4) Except as otherwise provided in **Section 4.4(b)**, a new **Member's** parcel is subject to an actual or pending Reimbursement **Assessment** known to the former or new **Member**.

4.4(d)(5) In the event a foreclosed Trustee's Deed is later rescinded, the grantee on the Trustee's Deed and the Owner restored on title are jointly and severally liable for any delinquent **Assessments** or other amounts that accrued during the time the Trustee's Deed was effective.

Section 4.4. Presumption of Validity. With respect to **Assessment** allocations made pursuant to **Article IV**, they shall be conclusively presumed to be valid for nine months after Notice of Levy unless challenged by Court action.

Section 4.5. No Waiver or Offset. No **Member** may be exempt from personal liability or release his or her parcel from liens and charges by waiver of the use of the **Common Roadway** or other improvement controlled by the **Association**. As provided for by law, **Members** cannot use any homestead or other exemption to avoid the obligation to pay **Assessments** (see generally *Lien*

Exception to Homestead Right - Code of Civil Procedure §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

NEW MEMBERS AND ADDITIONAL PARCELS

The **Association** may accept new **Members** and additional parcels may become subject to this **Declaration** as follows: **Owner Opt**, **Parcel Split**, **Annexation** or as otherwise provide by law. In the event of addition of parcels / **Members** to the **Association**, the **Board** has the authority, without a vote of the **Members**, to update **Exhibit A** and any numerical parcel references elsewhere in the **Governing Documents** to reflect the updated membership status.

Section 5.1. Owner Opt. **Owners** whose parcels have not previously been subject to this **Declaration** shall be permitted to join the **Association**. The **Association** may impose reasonable terms and conditions.

Section 5.2. Parcel Split. In the event any of the parcels subject to these **CC&Rs** are divided after the date of this **Declaration**, each of the resulting parcels from such division shall be considered a separate parcel for purposes of **Assessments**, voting and/or other obligations under this **Declaration**. The annual **Assessment** payable shall be prorated for the balance of the fiscal year and commencing on the date of approval of the land division by the County of Marin Planning Department. Each such resulting parcel shall remain in the same **Unit** as the original parcel from which divided.

Section 5.3. Annexation.

5.3(a) Generally. An annexation is defined, for purposes of this section, as any addition of property to the **Subdivision** included within the jurisdiction of this **Declaration** and/or the **Association**. Once annexation occurs, the newly annexed parcel(s) and the **Owners** of that property shall have the same rights, duties, and obligations as any other property included within the **Subdivision** and the **Owners** of such properties. Any Owner of real property which is adjacent to any border of the **Subdivision** can make a written request to the **Association Board** that a proposed annexation be submitted to the **Members** for approval in accordance with **Section 5.3(b)**, below. For purposes of this section, a parcel or parcels of property shall be considered contiguous to the **Subdivision** and thus eligible for annexation ("annexable property") if the property shares a common boundary with any portion of the **Subdivision** or with any other parcel ("adjoining parcel") which shares a common border with the **Subdivision** and is proposed for annexation contemporaneously with the adjoining parcel. It may also be annexed if access reasonably necessitates use of any **Association** controlled roads. Parcels proposed for annexation must be separate legal parcels and all governmental approvals required as a condition for annexation must be obtained by the Owner of the annexable property at his or her sole cost and expense.

5.3(b) Application for Annexation. In order to initiate a membership vote on the proposed annexation, the Owner of the annexable property shall present a written proposal for annexation to the **Association's Board** which shall include at least the following:

5.3(b)(i) A copy of the Declaration of Annexation (see **Section 5.3(e)**, below) which will be recorded with the County Recorder's Office upon approval of the proposed annexation by the **Members**;

5.3(b)(ii) A detailed description of the Owner's intentions with respect to the development, subdivision, and use of the annexable property, including any special development conditions imposed by the County in connection with the approval of a Subdivision Map for the annexable property or any proposal to create any local districts or County Service Areas which will have jurisdiction over the annexable property or any portion thereof;

5.3(b)(iii) If any additional **Common Roadways** or other improvements for which the **Association** is to have responsibility are proposed within the annexable property, detailed financial budgets and projections disclosing the maintenance, repair, operations, and capital reserve obligations which are likely to be incurred by the **Association** as a result of the annexation.

5.3(b)(iv) If the proposed annexation will involve the formation of any sub-associations or sibling associations with jurisdiction within the annexable property or the recordation of a supplemental declaration as provided in **Section 5.3(e)**, below, copies of all relevant documentation shall be furnished to the **Board**.

5.3(c) Board Approval. Upon receipt of a complete application for annexation, the **Board** shall have a period of 60 days to evaluate and act upon the proposal. The **Board's** action shall be to (a) approve the proposal and call for a membership vote thereon by written ballot in accordance with **Section 5.3(d)**, below; (b) disapprove the proposal; or (c) approve the proposal subject to the satisfaction of specified conditions. Unless **Board** approval is obtained, no annexation proposal need be presented to the **Members** unless a petition requesting a membership vote on the matter is signed by at least five percent (5%) of the **Members** and presented to the **Board** pursuant to the **Bylaws**. Among other requirements, the **Board's** approval can be conditioned upon the Owner of the annexable property agreeing to defray the costs of photocopying and mailing to the **Members** of all relevant documentation, the ballot and appropriate solicitation materials.

5.3(d) Membership Approval Required. Additional real property meeting the requirements of **Section 5.3(a)**, above (the "annexable property"), may be annexed to the **Subdivision** and brought within the general plan and scheme of this **Declaration** upon the approval by vote of a majority of the **Voting Power of the Members** .

5.3(e) Declaration of Annexation: Supplemental Declarations. Any annexations of real property to the **Subdivision** authorized under **Sections 5.3(c)** and **5.3(d)**, above, shall be effected by filing with the Office of the County Recorder a Declaration of Annexation, or other similar instrument, with respect to the annexable property.

5.3(f) Effect of Annexation. The filing of a Declaration of Annexation shall constitute and effectuate the annexation of the annexable property described therein, and thereupon the annexable property shall become and constitute a part of the **Subdivision**, and be subject to, and encompassed within, the general plan and scheme of this **Declaration**. Parcels within the

annexed property shall thereupon become subject to **Assessment** by the **Association** and to the functions, powers, and jurisdiction of the **Association**; and the Owners of parcels within the annexed real property shall automatically become **Members** of the **Association**.

ARTICLE VI **ROADWAY USE**

Section 6.1. Residential Use. The **Common Roadways** are for residential use by **Owners** of parcels in the **Rancho Santa Margarita Subdivision** and as may be otherwise set forth in deeds, easement grants or other real property rights in the chain of title.

Section 6.2. Use of Roadways

6.2(a) By Heavy Vehicles. No **Owners** shall cause or permit any use of the **Common Roadways** by vehicles in excess of the weight limit per axle which may be set from time to time by the **Association** in accordance with the conditions of the **Common Roadway** improvements and such other considerations as are relevant (for example, water trucks, heavy construction-related vehicles, such as concrete or lumber delivery trucks). The **Association** may require application and approval of heavy vehicles used in projects requiring a building permit. Further, regardless of weight, no **Owner(s)** shall cause or permit damage to any part of the **Common Roadway** improvements. The reasonable regulation of trucks using the Common Roadway and imposition of any fees or charges may be the subject of a policy adopted by the **Board**. The **Association** may adopt preapproved guidelines.

6.2(b) No **Owner** shall take any action or permit anything to be done or kept on the **Common Roadways** which would be in violation of any law.

6.2(c) There shall be no obstruction of the **Common Roadways**. Nothing shall be stored in the **Common Roadways** without the prior consent of the **Board**, and/or in accordance with written guidelines adopted by the **Board**.

6.2(d) Nothing shall be done to or in the **Common Roadways** which has an adverse effect on its enjoyment, use, value, condition or appearance. **Members** shall be liable for their own acts, as well as jointly and severally liable for the acts of family members, tenants, pets, guests and invitees. Any damage or destruction to the **Common Roadways** or other areas the **Association** maintains may result in a Reimbursement **Assessment** being levied against the **Member**, and/or tenant responsible for such damage or destruction and the **Member's** parcel.

6.2(e) Nothing shall be altered, constructed or removed from the **Common Roadways**, except with the written consent of the **Board**.

6.2(f) There shall be no violation of the rules and regulations relating to the use of the **Common Roadways**.

6.2(g) In order to properly maintain components which are the **Association's** responsibility, it is important that the **Board** have notice of any problems. **Owners** are encouraged to report

to the **Association** any problem observed in the condition of the area of **Association** responsibility.

6.2(h) Each **Person** shall comply with all of the requirements of all governmental authorities, federal, state and local, and all laws, ordinances, rules and regulations applicable to the **Subdivision**. Violation of any such law is also a violation of this **Declaration**.

Section 6.3. Work Affecting Roadways. No **Owner(s)** shall do any work within, upon, beneath or immediately adjacent to the **Common Roadways** unless an application for an encroachment permit is first made and obtained from the **Association**.

Section 6.4. Assurances. As to any work by or on behalf of any **Owner** which may directly or indirectly impact **Common Roadways**, the **Association** may require such reasonable terms and conditions to assure that there will be no negative impact on **Common Roadways** and/or that any potential damage done to the **Common Roadway**, shoulders, culverts and other related **Common Roadway** improvements is adequately addressed. The **Association** may require such insurance, statement(s) of responsibility, bonds and/or cash deposits as are appropriate to serve as security to cover the cost of any accelerated deterioration or damage to **Common Roadways** .

Section 6.5. Deemed Approval of Use Plan. If a **Member** applies for extraordinary use of the **Common Roadway** and the **Association** fails to approve, disapprove or otherwise substantively respond within forty-five (45) days of submittal, it shall be deemed approved without further action. This shall not, however, relieve the **Member** from any liability for damage to any **Common Roadway**.

Section 6.6. Use Rules. The **Association** may adopt rules to regulate, among other things, the use and manner of use of the **Common Roadways**. Such rules may include requiring compliance with posted signs, speed restrictions, weight restrictions and parking.

Section 6.7. Entity Ownership If title is held by a corporation or other entity, the entity is obligated to provide information about the designated entity representative including contact information. The legal entity shall keep this information updated. .

Section 6.8. Home Occupations. No trade or business shall be conducted on or from any parcel, except where there is no external evidence and, if the **Board** adopts a related policy, it is conducted in accordance with that policy. In no event shall a business be conducted which will (a) have a measurable negative impact on neighbors, (b) increase vehicle traffic within the **Subdivision** or to the parcel, or (c) cause any damage to the **Common Roadways**. The County of Marin Home Occupation Ordinance shall apply and, in the event of overlap or conflict, the more restrictive shall be applied.

Section 6.9. Illegal Acts. Any illegal act or condition shall also constitute a breach of the **Governing Documents** and may, at the option of the **Association**, be enforced as such.

Section 6.10. Local Ordinances. For any use restrictions which may apply to the **Subdivision** as set forth in the **Governing Documents**, there may also be County ordinances or State law which apply. In the event of overlap or conflict between the two, the more restrictive shall

be applied. Regardless, the **Association** may defer to the County to enforce ordinances or other laws.

Section 6.11. Residents May Not Confront Association Employees, Agents or Vendors.

The **Board's** authority with respect to the **Common Roadways** is exclusive. No **Person** shall confront, criticize, intimidate, order or act in a hostile manner toward any employee, agent or vendor of the **Association**. Communications on such subjects shall be in writing to the **Board**. If there is a pattern of inappropriate communications to the **Board**, employees, agents or vendors, the **Board** may limit the type and timing of communications and/or take other appropriate measures.

ARTICLE VII **INSURANCE**

Section 7.1. Types of Insurance.

7.1(a) Liability Insurance. The **Association** shall procure and maintain a comprehensive public liability policy insuring the **Association**, and any Director, manager, agent or employee, against any liability incident to the management, control or use of **Common Roadway**, related improvements and any other property, easement or other interest for which the **Association** may properly assume responsibility. The amount of general liability insurance that the **Association** shall carry at all times shall not be less than the minimum amounts specified by California Civil Code §5800 and §5805.

7.1(b) Director and Officer Liability Insurance. The **Association** shall obtain procure and maintain Director and Officer liability insurance in an amount which is no less than the minimum amounts specified by California Civil Code §5800.

7.1(c) Fidelity Bonds. The **Association** shall procure and maintain fidelity bonds or insurance covering Officers, Directors, agents and employees who have access to **Association** funds in an amount which is no less than the minimum amount specified by California Civil Code §5806.

7.1(d) Other Insurance. The **Association** may procure and maintain Worker's Compensation insurance to the extent necessary to comply with applicable laws, or any greater amount as the **Board** deems necessary, and any other insurance deemed necessary or appropriate by the **Board** .

Section 7.2. Coverage Not Available. If any insurance policy or endorsement required by this section is not available, or is not economically feasible, then the **Association** shall obtain alternate insurance which provides, as nearly as reasonably possible, such coverage.

ARTICLE VIII

ENFORCEMENT OF GOVERNING DOCUMENTS

Section 8.1. Dispute Resolution.

8.1(a) Internal Dispute Resolution Procedure (IDR). The **Association** may request IDR with an **Member** before or after a duly noticed hearing (see **Section 8.2**).

8.1(a)(1) Meet and Confer. In the event of a dispute between a **Member** and the **Association**, prior to filing legal action, the parties shall “meet and confer” in an effort to resolve the dispute pursuant to the provisions of Civil Code §5900-§5920 or an Internal Dispute Resolution procedure otherwise adopted by the **Board**.

8.1(a)(2) Participants and Venue. Participants may include the manager (if any), one or more Directors, and/or other designated representative(s). Participants must be physically present. Electronic participation, such as via speaker phone, audio or video streaming, is not permitted unless all parties agree.

8.1(a)(3) Owner Option. IDR is optional to the **Member**, but required for the **Association** if the **Owner** requests it.

8.1(b) Alternative Dispute Resolution (ADR). The **Association** may request ADR with a **Member** before or after a duly noticed hearing (see **Section 11.4**).

8.1(b)(1) Generally. In the event of a dispute arising out of the **Governing Documents**, there are several other dispute resolution tools available to **Members** and the **Association**. "Alternative dispute resolution" means a nonjudicial procedure that involves a neutral party in the decision-making process, such as mediation. With the exception of a Small Claims suit, some form of Alternative Dispute Resolution (ADR), pursuant to the **Davis-Stirling Act** or such other form of ADR as may be agreed upon, must be attempted before filing a legal action.

8.1(b)(2) Mediation.

8.1(b)(2)(i) In the event of a dispute between **Owners** and/or between an **Owner** and the **Association**, the parties shall attempt to resolve such dispute by mediation, pursuant to Civil Code §§5925-5965, before any formal action is filed or initiated. The cost of the mediator, if any, shall be borne equally.

8.1(b)(2)(ii) In the event of a dispute between **Owners**, if the parties cannot agree on a mediator to provide this service, the **Association** may recommend and/or facilitate the use of an Alternative Dispute Resolution provider. In the alternative, any party can request the president of the Marin County Bar Association to identify a local low cost mediation service provider and such designation shall be binding. A good faith effort to complete the mediation shall be a prerequisite to any further action.

8.1(c) Legal Action. Enforcement of the **Governing Documents** against any **Member** or **Occupant** may be undertaken by appropriate legal proceedings instituted by any **Member**,

the **Association**, or both. No action shall be filed by a **Member** or the **Association** unless or until there is compliance with the Alternative Dispute Resolution provisions of the **Davis-Stirling Act**. Legal proceedings may include the following:

8.1(c)(1) an action for mandatory injunction (a court order or judgment which requires someone to do something);

8.1(c)(2) an action for prohibitory injunction (in which the court prohibits specified behavior);

8.1(c)(3) an action for declaratory relief (such as interpretation of any provision of the **Governing Documents**); and/or

8.1(c)(4) a claim for damages, including prospective costs and costs actually incurred in obtaining compliance.

8.1(d) 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.

Section 8.2. Implementation. Prior to taking disciplinary action against an **Member**, the **Association** must provide the **Member** with due process as set forth in this **Section 8.2**.

8.2(a) Notices. Notices and requests must be in writing and may be delivered to **Members** by personal delivery or **Preferred Method of Delivery**. Notices from the **Association** must be sent at least 10 days prior to any hearing and shall include at a minimum, the date and time for the meeting at which the **Board** will consider disciplinary action, a brief description of the action or inaction constituting the alleged violation, and a statement that the **Member** has a right to attend the meeting and may address the **Board**.

8.2(b) Hearing. With a quorum of the **Board** present, the **Board** will review the facts and determine whether or not a violation has occurred and, if so, what action shall be taken. Action may include a directive to the **Member** and/or resident, levy of a Reimbursement **Assessment** and/or imposition of a fine. The **Member** or the **Association** may require that the hearing be conducted in Executive Session.

8.2(c) Statement of Decision. If the **Board** determines that the **Member** is in violation of the **Governing Documents**, the **Association** will provide written notice of the outcome of the hearing to the **Member** within fifteen (15) days following the hearing.

Section 8.3. Miscellaneous.

8.2(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**.

8.3(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.

8.3(c) Member Standing. Any **Member** shall also have such rights of enforcement as exist by virtue of Civil Code §5975 (including direct enforcement of this **Declaration**) or otherwise by law.

8.3(d) Fees and Costs of Governing Document Disputes. In a lawsuit arising out of a dispute involving the **Governing Documents** or the **Davis-Stirling**, the prevailing party shall be awarded reasonable attorney's fees and costs. After duly noticed hearing and decision (per **Section 8.2**), the **Association** may levy a Reimbursement **Assessment**.

ARTICLE IX **GENERAL PROVISIONS**

Section 9.1. Severability. Should any provision in this **Declaration** be void or become invalid or unenforceable in law or in equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

Section 9.2. Interpretation. The provisions of this **Declaration** and the other **Governing Documents** shall be liberally construed to effectuate its purpose of perpetuating a uniform plan for ingress and egress coming to and going from the parcels in the **Subdivision** and primarily the maintenance, repair and replacement of Common Roadways and related components accepted by the **Association**.

Section 9.3. Term of Declaration. The provisions of this **Declaration** shall continue and be effective until January 1, 2029, after which date this **Declaration** shall be automatically extended for successive periods of ten (10) years, until it is terminated by the **Members** in accordance with the law. This **Declaration** may be amended as provided below.

Section 9.4. Amendment. This **Declaration** may be amended by approval of a majority of the **Voting Power of the Members**. Said amendment shall be effective upon recordation in the Office of the County Recorder of the County of Marin. Notice of approval shall be given to all **Members** but, at the **Board's** discretion, need not include a paper copy of the full document previously submitted and voted upon. However, any amendment to **Section 1.9** that would change the method of calculating the "**Down the Road Charge**" must first have the approval of **Owners** representing 75% of the parcels in the **Subdivision**.

Section 9.5. Document Hierarchy. To the extent of any conflict between the **Governing Documents** and the law, the law shall prevail. To the extent of any conflict between the **Articles** (if any) and the **Declaration**, the **Declaration** shall prevail. To the extent of any conflict between the **Bylaws** and the **Articles** or **Declaration**, the **Articles** or **Declaration** shall prevail. To the

extent of any conflict between the operating rules and the **Bylaws, Articles** or **Declaration**, the **Bylaws, Articles** or **Declaration** shall prevail.

Section 9.6. Possible Preemption By Local Governmental Entity. In the event a Permanent Road Division, Community Service district, or other local governmental entity undertakes the raising and expending of funds to maintain, repair, or improve the **Common Roadway** and such activities would otherwise conflict with the **Association's** authority in this **Declaration**, that entity's powers shall take precedence.

Section 9.7. Member Responsibility. Each **Member** shall be liable to the **Association** for any costs incurred generally arising out of a **Governing Document** violation and/or damage to the **Common Area** or damage to areas which the **Association** must maintain, repair or replace caused, directly or indirectly, by the **Member** or his or her family, pets, guests, invitees, tenants, the guests or invitees of any **Occupant** (including but not limited to inadvertence, failure to act, active or passive negligence, or willful misconduct, or otherwise). Such responsibility shall include related costs and fees generally that are incurred by the **Association**. Each **Member** shall protect, defend, hold harmless and indemnify the **Association** and Directors from any third party and/or other **Member** or resident claim related to **Member** or **Member's** parcel and arising out of the **Governing Documents** or law.

Section 9.8. Transfer of Ownership Interest.

9.8(a) Documents and Information Relating to Sale. Prior to the transfer of title to a parcel, the transferring **Member** shall provide the prospective new Owner with a copy of the **Governing Documents** and such other documents and information as are required by California Civil Code §4525.

9.8(b) Notice of Acquisition. A purchaser or other **Person** acquiring an ownership interest to a parcel shall notify the **Association** not more than fifteen (15) 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 **Members(s)**, (c) day and evening telephone numbers, (d) email address, and (e) the effective date of acquisition of each ownership interest.

Section 9.9. Corrections & Legal Updates.

9.9(a) Updating of Preempted Content or Other Law Reference in CC&Rs. The **Board** shall have authority to update these **CC&Rs** if or when changes in any statutory law and/or development in applicable case law preempt or supplement the content set forth in these **CC&Rs**. Before the **Board** can approve such an update, the **Board** must have confirmation from counsel of the nature of the statutory preemption or development in applicable case law and must provide **Members** with at least twenty-eight (28) day notice of the proposed change. The **Board** may then approve revision of these **CC&Rs** to conform to change(s) in the law. A **Declaration** that is updated under this section may be restated and recorded, with the amendment information noted.

9.9(b) Errata or Scrivener's Error. If the **Board** determines any **Governing Document** contains errata or a scrivener's error, the **Board** may make findings and a resolution using the

notice of proposed change procedure (similar to Civil Code §4360 - Rule Adoption) and then, by **Board** approval, cause correction.

Section 9.10. Subordination to Secured Interests. This **Declaration** shall be deemed subject to and subordinate to all mortgages and/or deeds of trust now or hereafter executed covering the parcels subject to this **Declaration**. None of the provisions of this **Declaration** shall supersede or in any way reduce the security or effect or validity of any such mortgage or deed of trust.

Section 9.11. Recreational Use. Any user claim related to recreational use of **Common Area** is subject to Civil Code §846.

CERTIFICATE OF AMENDMENT

The **Association** desired to make substantial changes to the **Declaration** pursuant to the amendment provisions of Civil Code §4270, and on _____, 20__ the **Members** voted and approved the language of said changes.

This Amended Declaration of Covenants, Conditions and Restrictions supersedes the Former Declaration.

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 _____, California on _____, 20__.

President:
Rancho Santa Margarita Property
Owners Association

Secretary:
Rancho Santa Margarita Property
Owners Association

2023 RSM CC&Rs v5RL.wpd
dlr: 9/20/23

(Notary Acknowledgment(s) Attached)

Glenn H. Youngling, PLC
1108 Irwin Street, San Rafael, California 94901
1.415.454.1090

Exhibit A

| RANCHO SANTA MARGARITA SUBDIVISION | | |
|---|--------------------------|----------------------|
| RSMPOA MEMBERS | NON-MEMBER OWNERS | SITE ADDRESS |
| UNIT 1 PARCELS: | | |
| | 121-210-22 | 11 VIA DEL SOL |
| | 121-210-24 | 120 CAMINO MARGARITA |
| | 121-210-25 | 105 CAMINO MARGARITA |
| | 121-210-31 | 300 CAMINO MARGARITA |
| | 121-210-32 | 41 VIA DEL SOL |
| | 121-210-35 | 275 CAMINO MARGARITA |
| | 121-210-36 | 350 CAMINO MARGARITA |
| | 121-210-39 | 110 LA CANADA ROAD |
| | 121-210-40 | 60 LA CANADA ROAD |
| | 121-210-41 | 35 LA CANADA ROAD |
| | 121-210-42 | 200 CAMINO MARGARITA |
| | 121-210-43 | 45 VIA DEL SOL |
| | 121-210-44 | 51 VIA DEL SOL |
| | 121-210-63 | LA CANADA |
| | 121-210-62 | CAMINO MARGARITA |
| | 121-210-55 | 130 CAMINO MARGARITA |
| | 121-260-20 | 5 EL MIRADOR |
| | 121-260-22 | 40 CAMINO MARGARITA |
| | 121-260-23 | 65 EL MIRADOR |
| | 121-260-24 | 55 EL MIRADOR |
| | 121-260-26 | 35 CAMINO MARGARITA |
| | 121-260-28 | 36 CAMINO MARGARITA |
| | 121-260-30 | 25 EL MIRADOR |
| | 121-260-31 | 95 CAMINO MARGARITA |
| | 121-260-32 | 85 CAMINO MARGARITA |
| | 121-260-33 | 40 EL MIRADOR |
| | 121-260-34 | 45 EL MIRADOR |
| | 121-260-35 | 46 CAMINO MARGARITA |
| | 121-260-37 | 50 CAMINO MARGARITA |
| | 121-260-38 | 20 CAMINO MARGARITA |
| | 121-260-44 | 30 CAMINO MARGARITA |
| | 121-280-12 | 222 CAMINO MARGARITA |
| | 121-280-14 | 2 LOS PINOS |
| | 121-210-23 | 7 VIA DEL SOL |
| | 121-260-36 | 50 EL MIRADOR |
| # Unit 1 Parcels: | 33 | 2 |

| | RSMPOA MEMBERS | NON-MEMBER OWNERS | SITE ADDRESS |
|-----------------------|-------------------|----------------------|----------------------------|
| UNIT 2 PARCELS | | | |
| | 121-280-02 | | 25 LOS PINOS |
| | 121-280-08 | | 70 (aka 64) LOS PINOS |
| | 121-280-11 | | 75 LOS PINOS |
| | 121-280-13 | | 1 LOS PINOS |
| | 121-280-15 | | 40 LOS PINOS |
| | 121-280-16 | | 48 LOS PINOS SPUR |
| | 121-280-17 | | 53 LOS PINOS SPUR |
| | 121-280-18 | | 54 LOS PINOS SPUR |
| | 121-280-19 | | 51 LOS PINOS SPUR |
| | 121-280-20 | | 55 LOS PINOS SPUR |
| | 121-280-22 | | 45 LOS PINOS |
| | 121-280-25 | | 52 (aka 60) LOS PINOS SPUR |
| | 121-280-33 | | 33 LOS PINOS |
| | 121-280-21 | | 49 LOS PINOS |
| | | 121-280-23 | 35 LOS PINOS |
| | | 121-280-26 | LOS PINOS SPUR |
| | | 121-280-29 | LOS PINOS SPUR |
| | | 121-280-30 | 44 LOS PINOS |
| | | 121-280-31 | 125 CAMINO MARGARITA |
| # Unit 2 Parcels: | 14 | 5 | |
| Total # Parcels: | 47 | 7 | 54 |
| | | | as of 1/1/23 |

Note: See **Article V** re **Board** authority to update this Exhibit without a vote of the **Members**