

Recording Requested By &  
When Recorded Return To:

**Camino Village Homeowners Association**  
c/o ANGIUS & TERRY LLP  
980 Ninth Street, Suite 2050  
Sacramento, Ca 95814  
916-498-9000

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**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF CAMINO VILLAGE HOMEOWNERS ASSOCIATION**

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**FIRST RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
CAMINO VILLAGE HOMEOWNERS ASSOCIATION**

**RECITALS**

**R1.** Whereas, Camino Village Homeowners Association is the successor to BGC Development, Inc., a California Corporation and Nishimoto Development, Inc., a California Corporation, (collectively as to Lots 1-40, inclusive, and Lot 42 of the Map hereinafter defined) Berle G. Crisp, and Carol Crisp, (as to Lots 41 and 43 of the Map hereinafter defined), hereinafter collectively referred to as "Declarant." Declarant executed a Declaration of Covenants, Conditions, and Restrictions, dated December 17, 1993, and recorded on January 5, 1994, in Book 940105, at pages 1021 et seq., in the Official Records of the County of Sacramento, State of California;

**R2.** Whereas, the above-referenced Declaration of Covenants, Conditions, and Restrictions establishes certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property located in the City of Sacramento, County of Sacramento, State of California, and more particularly described as set forth in Exhibit "A," and in any Declarations of Annexation to the Camino Village Homeowners Association filed with the Sacramento County Recorder;

**R3.** Whereas, pursuant to Section 15 of the above-referenced Declaration of Covenants, Conditions, and Restrictions, the Members of Camino Village Homeowners Association, constituting at least fifty-one percent (51%) of the Owners, desire to restate, modify and otherwise change the above-referenced Declaration of Covenants, Conditions, and Restrictions;

**R4.** Therefore, pursuant to Section 15 of the above-referenced Declaration of Covenants, Conditions, and Restrictions, the Members of Camino Village Homeowners Association, constituting at least fifty-one percent (51%) of the Owners of Camino Village Homeowners Association, do hereby declare that the above-referenced Declaration of Covenants, Conditions, and Restrictions be and is hereby RESTATED in its entirety. In the place and stead of the restated Declaration of Covenants, Conditions, and Restrictions, the Members hereby adopt and substitute this First Restated Declaration of Covenants, Conditions, and Restrictions of Camino Village Homeowners Association;

**R5.** It is further hereby declared that all of the real property described herein constitutes a "Planned Development" within the meaning of Section 1351(k) of the California Civil Code;

**R6.** It is further hereby declared that all of the real property described herein is held and owned and will be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following First Restated Declaration of Covenants, Conditions, and Restrictions, which is declared and agreed to be in furtherance of a plan

and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of that real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of that real property and any part thereof;

**R7.** It is further hereby declared that all of the Covenants, Conditions, and Restrictions herein set forth will constitute enforceable equitable servitudes as provided in Section 1354 of the California Civil Code and will constitute covenants that will run with the real property and will be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns; and

**R8.** It is further hereby declared that each Owner, by acceptance of a deed to a Lot, will be deemed to have agreed, for any and all purposes, for each Owner and for the members of each Owner's family, contract purchasers, tenants, lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this First Restated Declaration of Covenants, Conditions, and Restrictions which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the Camino Village Project, either individually or as a class, Camino Village Homeowners Association or the public generally, regardless of whether the deed refers specifically to this First Restated Declaration of Covenants, Conditions, and Restrictions or to any such duty, obligation or agreement.

## **ARTICLE I: DEFINITIONS.**

**Section 1.1. "Architectural Committee"** means the committee established under Article VIII for the purpose of considering and taking action with respect to proposed work of Improvements within the Project.

**Section 1.2. "Articles"** means the Articles of Incorporation of Camino Village Homeowners Association, which are filed in the Office of the Secretary of State of California, as such Articles may be amended from time to time.

**Section 1.3. "Assessment"** means any Regular, Special, or Special Individual Assessment made or assessed by the Association against an Owner and their Lot in accordance with the provisions of Article V of this Declaration.

**Section 1.4. "Association"** means Camino Village Homeowners Association, a California nonprofit mutual benefit corporation, and its successors and assigns. Camino Village Homeowners Association is an "association" as defined in California Civil Code Section 1351(a).

**Section 1.5. "Association Rules"** means the rules, regulations and policies adopted by the Board of Directors, pursuant to Section 4.6(a)(ii)(E) of this Declaration, as the same may be in effect from time to time.

**Section 1.6. "Benefit Easement"** means that certain right of use of a portion of the side yard of an adjoining Lot Owner as more specifically described in that certain document entitled "Declaration of Use Easements Agreement," recorded in the Office of the Sacramento County Recorder on December 8, 1993, as Instrument No. 2135.

**Section 1.7. "Board of Directors" or "Board"** means the Board of Directors or the governing body of the Association.

**Section 1.8. "Buildings"** means structures located on the Project.

**Section 1.9. "Bylaws"** means the Association's Bylaws, as may be amended.

**Section 1.10. "Common Area"** means all real property maintained by the Association for the common use and enjoyment of the Owners and includes, but is not limited to, the area shown on the Map as Fallwater Lane, the entry gate and any installed telephone/intercom system, pole lights, sign lights, street lights, street light electricity, and the wall bordering the Project.

**Section 1.11. "Common Expense"** means any use of Association Funds authorized by Article IV and V hereof and includes, without limitation: (a) All expenses incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, or any portion of any Lot that the Association is obligated to maintain or repair, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities or any portion of any Lot that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Section 1.12. "Common Facilities"** means the trees, hedges, plantings, lawns, shrubs, landscaping, lighting fixtures, Buildings, structures and other facilities located, constructed or installed, or to be located, constructed or installed within the Common Area.

**Section 1.13. "County"** means the County of Sacramento, State of California, and its various departments, divisions, employees and representatives.

**Section 1.14. "Declaration"** means this First Restated Declaration of Covenants, Conditions, and Restrictions of Camino Village Homeowners Association, recorded in the Office of the County Recorder of Sacramento County, California as it may be amended from time to time.

**Section 1.15. "Director"** means a member of the Association's Board of Directors.

**Section 1.16. "First Mortgage"; "First Mortgagee"; "Eligible First Mortgagee"** "First Mortgage" means a security device which constitutes a lien of first priority against any Lot. "First

"Mortgagee" means any institutional lender who is a secured party who holds a First Mortgage as defined in this section, and includes the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the U.S. Department of Housing and Urban Development, the Federal Housing Administration (FHA), the United States Department of Veterans Affairs (VA), and any assignee, in whole or in part, of such First Mortgage. "Institutional Lender" means any entity that is in the business of making real property loans and that is regulated by or chartered for that purpose under federal or state laws. "Institutional Lender" includes, without limitation, any bank, savings and loan association, insurance company, mortgage broker, credit union, pension or profit sharing trust fund, or a federally chartered corporation or a government agency that is either a lender or that purchases mortgages. Eligible First Mortgagee means a First Mortgagee that has requested notice by sending a written request to the Association, stating both its name and address and the Lot number or Lot address for which it has a mortgage. Where any provision of the Governing Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of the First Mortgage will be deemed to be the required approval.

**Section 1.17. "Governing Documents"** is a collective term that means and refers to this Declaration and to the Association's Articles, Bylaws, Rules and the policies and resolutions adopted by the Board and distributed to the Members.

**Section 1.18. "Improvement"** means an addition to or alteration of the real property comprising the Project or any portion thereof and includes, but is not restricted to, any Building, outbuilding, structure, shed, driveway, parking area, paving, walk, fence, wall, arbor, deck, balcony, pole, sign, tank, ditch, swimming pool, landscaping, landscape structures, solar heating equipment, spa, antenna, utility line, court, gate, statue, marker, hold, pipe and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind.

**Section 1.19. "Lien"** means any lien, whether voluntary or involuntary.

**Section 1.20. "Lot"** means any parcel of land shown on the Map, and any other parcel of land designated as a Lot in any recorded supplement to the Declaration, including declarations of annexation, except for Common Area.

**Section 1.21. "Maintenance"** means the exercise of reasonable care to keep, including the repair of, Buildings, landscaping, lighting and Common Area and real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted.

**Section 1.22. "Map"** means that certain Project map entitled "Map of Compton Place," recorded on June 23, 1993, in Book 227 of Maps, Map No. 2, in the Official Records of the County.

**Section 1.23. "Member"** means every person or entity who is a record Owner of a fee or undivided fee interest in any Lot within the Project and, thereby, holds a Membership in the Association except any such person or entity who holds an interest in a Lot merely as a security for the performance of an obligation.

**Section 1.24. "Member in Good Standing"** means a Member of the Association who is current in the payment of all dues, assessments, fines, penalties and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as more particularly set forth in the Bylaws.

**Section 1.25. "Mortgage"** means any security device encumbering all or any portion of the Project, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably.

**Section 1.26. "Mortgage Lien"** means the lien or charge or equivalent security interest of any mortgage or deed of trust. **"Mortgagor"** will refer to the trustor under a deed of trust, as well as a mortgage.

**Section 1.27. "Owner"** means any person or entity which owns a fee simple interest in any Lot. The term "Owner" includes, except where the context otherwise requires, the Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. The term "Owner" does not include those having such interest merely as security for the performance of an obligation.

**"Owner of Record"** and/or **"Member of the Association"** include an Owner and mean any person or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**Section 1.28. "Party Walls"** means any Improvements, including fences, that are constructed on the property line of any adjoining Lots, a portion of which is located on each of the two adjoining Lots.

**Section 1.29. "Project"** means the entire real property described in Exhibit "A" attached hereto, including all structures and Improvements constructed or to be constructed thereon or any additional properties annexed into the Association.

**Section 1.30. "Regular Assessment"** means an Assessment levied on an Owner and their Lot in accordance with Section 5.2 of the Declaration.

**Section 1.31. "Residential Use"** means occupation and use of a Lot for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy residential dwellings.

**Section 1.32. "Special Assessment"** means an Assessment levied on an Owner and their Lot in accordance with Section 5.3 hereof.

**Section 1.33. "Special Individual Assessment"** means an Assessment made against an Owner and their Lot in accordance with Section 5.4 hereof.

**Section 1.34. "Unit"** means the Improvements located on each Lot, comprising a single residence and appurtenances.

## **ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.**

**Section 2.1. Elements of Lot.** Ownership of each Lot within the Project includes:

- (a) Lot. A separate Lot as defined herein and described, depicted, and identified by number on the Map.
- (b) Membership in the Association.
- (c) Nonexclusive easements, subject to any other provisions of this Declaration under which such easements may be modified or extinguished over the Common Area.

**Section 2.2. Persons Subject to Governing Documents.** All present and future Owners of Lots within the Project are subject to, and must comply with, each and every provision of the Governing Documents, as they may be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (e.g., tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Lot constitutes the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as may be amended from time to time, are binding upon them and that they will observe and comply with the Governing Documents.

The liability and obligation of any Owner for performance of any one and all provisions of the Governing Documents with respect to any Lot terminates upon the sale, transfer, or other divestiture of such Owner's entire interest in that Lot with respect to obligations arising hereunder from and after the date of such divestiture.

### **Section 2.3. Delegation of Use.**

**(a) Delegation of Use and Leasing of Lots.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Lot, provided that any rental or lease may only be for Residential Use and for a term not less than ninety (90) days.

During any period when a Lot has been rented or leased, the Owner-lessor, their family, and guests and invitees will not be entitled to use and enjoy the Common Areas or Common Facilities of the Project, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Lot, provided that this restriction does not apply to an Owner-lessor who is contemporaneously residing in another Lot within the Project.

Any rental or lease of a Lot is subject to the provisions of the Governing Documents, all of which are deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor must provide any tenant or lessee with a current copy of all Governing Documents and must be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Lot.

**(b) Discipline of Lessees; Exercise of Eviction Authority.** An Owner who leases their Lot to any person or entity is responsible for assuring compliance by the lessee with the provisions of the Governing Documents, including but not limited to, all easements, reservations, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time.

Subject to Subsection (c), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association may take such corrective action as it deems necessary or appropriate under the circumstances, which may include initiation of an eviction proceeding in accordance with Subsection (c), below, or the imposition of fines and penalties against the Owner or tenant/lessee.

Whether or not such right is stated in any rental agreement, every Owner who rents their Lot automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner will be responsible for all costs thereof, including reasonable attorneys' fees, and will reimburse the Association upon demand for the entire amount of such costs. If the Owner refused to make such reimbursement, the sums will constitute a Special Individual Assessment (Section 5.4) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from Sections 1165 and 383 of the California Code of Civil Procedure and will only arise if the tenant's or lessee's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other occupants.

Any fine or penalty levied pursuant to this Section 2.3 will be considered a Special Individual Assessment as defined in Section 5.4, below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, the renter or lessee agrees to be personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date. This provision, however, will not be construed to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments, for which such Owner would otherwise be responsible. Any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in Subsection (c), below. Any Owner who leases their Lot is responsible for assuring compliance by the lessee with the Governing Documents.

**(c) Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Project, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association has

no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied:

(i) The Owner has received written notice from the Board or the Association's property manager, if any, detailing the nature of the lessee's or tenant's alleged infraction or misconduct and advising the Owner of their right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary;

(ii) The Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and

(iii) The Owner has failed to prevent or correct the tenant's objectionable misconduct. Any hearing requested hereunder must be conducted in accordance with Section 13.6.

(d) **Security Deposit.** Through its rule-making power, exercised in accordance with Subsection 4.6(a)(ii)(E) hereof, the Board of Directors is hereby authorized and empowered to establish and implement an Association security deposit procedure to protect the Association, the Common Area and Common Facilities from negligence, damage and/or destruction caused by an Owner's tenants or lessees or the tenant's or lessee's families and guests. The security deposit, if required, will be payable by the Owner and will be fixed in an amount not to exceed the annual assessment and will be held by the Association in a separate security deposit fund in the name of the Association. Within two weeks following receipt of notice from the Owner-lessor that the Lot is no longer being leased, the Association will furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and will return the remaining portion of the security to the Owner.

(e) **Recoverable Costs and Expenses.** In the event of: (i) damage to, or destruction of, Common Areas or Common Facilities by a tenant or lessee or the Owner of a leased Lot; (ii) the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of the Owner's tenant or lessee; or (iii) expenses incurred by the Association in the successful prosecution of an eviction proceeding pursuant to Subsection (b), above, the Association may apply the security deposit to the Recoverable Costs and Expenses. The Owner-lessor will thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the lease and notification to the Association of such termination, the security deposit, or the balance thereof, will be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided above, the Association must give the Owner-lessor the notice and hearing rights specified in Subsection (c) above.

**Section 2.4. Merger of Lots.** The Association has the right, but not the obligation, to grant to the Owner of two (2) or more adjacent Lots those easements necessary or appropriate to permit such Owner to effect internal access from one Lot to another through the walls or other portions of the Common Area which separate and divide the individual Lots. Such Lots will, for all purposes of the Governing Documents, remain and be treated as two (2) separate Lots. The Association also has the right, but not the obligation, to grant the Owner of two (2) or more adjacent Lots those

easements necessary or appropriate to permit such Owner to separate and divide Lots previously joined hereunder.

All of such work will be done at the expense of the Owner, and any such Owner must indemnify the other Owners and the Association against and hold them harmless from, any cost, loss, liability, damage, or injury to property or persons arising from, or caused by, such work. As a condition to the grant of any such easement, the Association may impose such reasonable terms and conditions with respect thereto as the Board deems necessary or appropriate including, without limitation, a requirement that the Owner obtain lien and completion bonds to assure lien-free completion of the work.

**Section 2.5. Obligations of Owners.** Owners of Lots within the Project are subject to the following:

**(a) Owner's Duty to Notify Association of Contract Purchasers and Tenants.**

**(i) Sale.** At least ten (10) days before the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner or Owners must provide the following information to the secretary of the Association or the Association's property manager, if any, in writing:

- (A)** The name of each transferor and transferee;
- (B)** The Lot number and street address of the Lot to be transferred;
- (C)** The mailing address of each transferee;
- (D)** The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (E)** The proposed date for consummation of the transfer.

**(ii) Lease.** No later than five (5) days after the execution of a lease or rental of a Lot and in all circumstances at least three (3) days prior to providing a lessee or tenant with possession of a Lot, the lessor or Owner that is renting (whether an Owner or prior lessee) must provide the Association with an executed copy of the lease or rental agreement and the following information in writing:

- (A)** The name of each lessor or Owner that is renting and each lessee or tenant;
- (B)** The Lot number and street address of the Lot to be leased or rented;
- (C)** The mailing address of each lessee or tenant;

(D) The commencement and termination dates of the lease or rental agreement; and

(E) The names of all persons who will occupy the Lot under the lease or rental agreement.

(iii) **Effect of Failure to Notify.** Until such time as the Association receives the notice required herein above, a transferee, lessee or tenant will be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder.

(b) **Contract Purchasers.** A contract seller of a Lot must delegate their voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller will 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.**

(i) As more particularly provided in California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) 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; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association will, within ten (10) days of the mailing or delivery of a request for the information described in Subsection (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding Subsection (c)(i), above. The Association will be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Lot.

(d) **Payment of Assessments and Compliance with Association Rules.** Each Owner must pay when due each Regular, Special and Special Individual Assessment levied against the Owner and their Lot and must observe, comply with and abide by any and all Association Rules set

forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

**(e) Responsibility for Conduct of Others.** Each Owner is fully responsible for informing members of Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and is fully responsible for any violation of the provisions of the Governing Documents by members of Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. Each Owner is fully responsible for the conduct and activities of Owner's pets and the pets of Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

**(f) Indemnification for Damage and Injury.** Each Owner will be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner, Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance).

Each Owner, by acceptance of their deed, agrees personally and for family members, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or other person temporarily visiting said Owner's Lot or the Project.

No decision resulting in the liability of an Owner pursuant to this Subsection 2.5(f) will be reached before providing such Owner with notice and a hearing pursuant to Subsections 13.6(e) and (f).

**(g) Discharge of Assessment Liens.** Each Owner must promptly discharge any Assessment lien that may hereafter become a charge against their Lot.

**(h) Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents are joint and several. Without limiting the foregoing, this Subsection (h) applies to all obligations and duties of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

**(i) Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and their Lot pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

**(j) Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner will not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association Membership rights possessed by the transferor by virtue of the ownership of the Lot will cease. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid assessments against said Lot being conveyed.

**(k) Obligation to Permit Entry by Association and/or Adjacent Owners.** Each Owner is obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs to mechanical or electrical services, including installation of television antennas and related cables, which are reasonably necessary for the use and enjoyment of their Lot, provided that the adjacent Owner furnishes the Owner whose Lot is being entered upon with twenty-four (24) hours written notice of their intent to enter the Lot, specifying the purpose and scheduled time of such entry and must make every reasonable effort to perform their use and schedule their entry in a manner that respects the privacy of the persons residing within the Lot and the convenience of the occupants of the Lot. Each Owner must also honor the right of the Association to enter Lots as provided in Section 4.5(b).

**Section 2.6. Party Walls.** The following provisions apply with regards to Party Walls in the Project:

**(a) General Rules of Law to Apply.** Each wall or fence which is built and placed on the dividing line between the Lots will constitute a Party Wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions will apply thereto.

**(b) Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall will be shared by the Owners who make use of the wall in equal proportion to such use.

**(c) Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they will contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

**(d) Weatherproofing.** Notwithstanding any other provisions of this article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by their negligent or willful act causes the Party Wall to be exposed to the elements will bear the whole cost of furnishing the necessary protection against such elements.

**(e) Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this article will be appurtenant to the land and will pass to such Owner's successors in title.

**(f) Arbitration.** In the event of any dispute between Owners concerning a Party Wall, each party will choose one arbitrator, and such arbitrators will choose one additional arbitrator, and resolution of the dispute will be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request therefor, the Board of Directors will select an arbitrator for the refusing party. The arbitrators will render a decision within 30 days after appointment.

**(g) Party Wall Easements.** In all cases where structural wall constituting a common wall for two Units, is located upon the dividing line between adjacent Lots, the Owner of the adjoining Lot will have reciprocal mutual nonexclusive easements for the maintenance of the wall, the reconstruction of the wall in the event of the partial or total destruction of the same, drainage associated with the wall or the Unit of which the wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Unit or Units on the Lot or Lots. The Owner of a Lot having a structural wall situated on the boundary line between their Lot and the adjoining Lot will not attach anything to the outside of the wall which will protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated will not attach anything to the outside of said wall without the consent and permission of the Owner of the adjoining Lot upon which the Unit of which the wall is a part is situated.

### **ARTICLE III: RESTRICTIONS & USE OF PROJECT.**

In addition to the restrictions established by law or set forth in the Association Rules promulgated by the Board of Directors, consistent with this Declaration, the following restrictions are hereby imposed upon the use of the Project.

**Section 3.1. Residential Use.** No Lot may be occupied, used, or improved for other than residential and associated noncommercial purposes. No Unit may be occupied by more than two (2) persons per bedroom plus one (1) additional person without the prior written approval of the Board. No Lot may be rented or leased for transient or hotel purposes.

**Section 3.2. Rental of Lots.** The lease or rental of Lots is subject to the Governing Documents and a breach of the Governing Documents is a default of the lease or rental agreement. No Lot may be leased or rented for a period of less than Ninety (90) consecutive days. The occupancy of a Lot by other than the Owner or such Owner's immediate family must be reported to the Association in writing prior to such occupancy and a copy of the written rental agreement or lease must be concurrently furnished to the Association. Any monetary obligation incurred by any non-Owner occupant to the Association will also be the personal obligation of the Owner of the Lot so occupied, and may be levied against such Lot as an Assessment.

Each Owner leasing a Lot pursuant to this section will be strictly responsible and liable to the Association and its Members for the actions of such Owner's tenant(s) in the Project and for each lessee's or tenant's compliance with the provisions of the Governing Documents.

**Section 3.3. Restriction on Businesses.** The conducting of any trade or business is prohibited, except those trades or businesses that are permitted by and comply with zoning and other laws or ordinances, and which do not: (i) change the overall residential use of the Unit; (ii) have persons other than the occupant employed or reporting to work at the Unit; (iii) display or publish the address of the business, except on business cards and letterhead; (v) display signs or other exterior indications of a trade or business; (vi) have items sold or offered for sale on the premises; (vii) involve in-person calls by customers, employees, or delivery persons except on an infrequent basis; (viii) require the storage of large amounts of bulky goods or inventory or any hazardous or toxic materials; or (ix) require the parking of vehicles on the streets within the Project. The Association may have maintenance facilities within the Project.

**Section 3.4. Use and Parking of Vehicles.** Vehicles may not be parked within the Project, including the streets, except within an enclosed garage or on areas of the Project that the Rules specifically designate as for parking. Parking that the Rules designate as guest parking is to be used by guests only. The following is prohibited at the Project:

(a) Vehicles that lack any of the following qualities: street legal (other than vehicles specifically designed as off-road vehicles), completely operational, quiet, smoke-free, all lights work, and all body parts are intact;

(b) The parking or maintenance of mobile homes, motor homes, trucks, commercial vehicles, campers, boats, trailers, or similar vehicles, except: (i) within enclosed garages provided that there is remaining space available in the garage for the occupants' other vehicles; (ii) where required temporarily for the construction, repair, refinishing, or maintenance of any part of the Project; (iii) for moving furnishings, equipment, or supplies into or out of the Project; or (iv) for washing vehicles in a Lot's driveway or (v) light pick-up trucks and vans used for personal use and for commercial purposes, provided that any signs or markings of a commercial nature on such vehicles is unobtrusive and inoffensive;

(c) The placement or maintenance of motorcycles, trail bikes, off-road vehicles, or bicycles, except within enclosed garages. Off-road unlicensed motor vehicles may not be operated within the Project;

(d) Using a garage for storage or otherwise so that it cannot be used to store at least two (2) of the occupant's motor vehicles. No garage may be converted to living quarters or otherwise disabled from being used for vehicle parking. Occupants must utilize the garage to park occupant's motor vehicles to the capacity of the garage. Occupants must keep the exterior garage door closed except when the garage is in actual use by an occupant. Occupants' vehicles must be parked in garages at night.

**Section 3.5. Use of Streets.** The streets may not be used for recreational purposes, including but not limited to, skateboarding, joyriding and racing, except for walking and jogging and Board approved events.

**Section 3.6. Disposal of Refuse.** Occupants must place refuse in covered sanitary receptacles that are suitable for the collection of refuse. Such receptacles must be enclosed and screened from view from the Common Area and protected from disturbance. No refuse may be placed in streets or Common Area view more than twenty-four (24) hours prior to the scheduled pick-up time. No oil, petroleum product, or other chemicals may be placed in the storm drainage system, street drains, or gutters.

Any extraordinary accumulation of refuse (such as debris generated upon vacating of premises or during the construction of Improvements) must be removed from the Project to a public dump or trash collection area by the Owner or tenant at their expense. The Association may impose reasonable fines and penalties for the collection of refuse disposed in a manner inconsistent with this subsection.

**Section 3.7. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling.** The following activities are prohibited and may not be performed on, upon or within the Project:

**(a) Noxious Activities.** Activities which are noxious, harmful or offensive;

**(b) Nuisances.** Activities which are nuisances, harassment, annoy or cause unreasonable embarrassment or disturbance to any occupants of the Project, Owners, Board Members, Association agents or employees, or which may, in any way, interfere with occupants' use and enjoyment of the Project;

**(c) Relating to Insurance Rates.** Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

**(d) Violations of Government Regulations.** Activities which are in violation of any governmental statute, ordinance, rule, and/or regulation;

**(e) Drilling.** Drilling, refining, quarrying, or mining operations of any kind;

**(f) Use of Machinery.** Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a Unit or appurtenant structures within the Project;

**(g) Obstruction of Driveways.** Activities which will obstruct entranceways, pedestrian walkways, or vehicular driveways located in or upon the Project or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs;

**(h) Interference with Drainage.** Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Project;

**(i) Infectious Diseases.** Activities or conditions which would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

**(j) Excavation.** Any excavation, improvement or work which in any way alters any Common Area or Common Facility, without the prior written consent of the Board;

**(k) Basketball Standards and Sport Apparatus.** The placement of fixed or moveable basketball standards or sports apparatus;

**(l) Storage of Hazardous Materials.** The storage of the following materials: flammable, explosive, radioactive, or hazardous materials or items that endanger the safety of occupants or of Improvements or that may cause an increase in insurance rates to the Association or to another Owner;

**(m) Accumulation of Garbage.** The accumulation, dumping, or outdoor burning of garbage, clippings from trees, weeds, shrubs, or lawns, trash, debris, ashes, manure, composting or decaying vegetation material, or other refuse on any Lot. Refuse containers, woodpiles, storage areas, or machinery and equipment related to yard care and maintenance, are permitted provided such materials are screened from the view of streets, Lots, and Common Areas;

**(n) Operation of Electronic Devices.** The operation of any shortwave or any other kind of electronic device within the Project that in any way interferes with radio, television, or other electronic signal reception within the Project;

**(o) Maintenance of Improvements.** The maintenance, replacement, removal or decoration of any Improvements or landscaping within the Common Area without the prior written approval of the Association;

**(p) Excessive Noise.** Any activity upon any Lot, which activity causes any sound, whether intermittent, recurrent, or continuous, in excess of forty-five (45) decibels measured at any point on the boundary line of the Lot. Decibel measurements will be the average of at least three (3) and at most five (5) decibel readings by a qualified technician. The foregoing provisions of this subsection will not apply to the installation or use of alarm devices designed and used solely for security or fire warning purposes or apply to the construction work of any Improvement;

**(q) Placement of Equipment.** The placement of unattended equipment in front yards and areas visible from adjoining Lots, Common Areas, or streets;

**(r) Garages and Garage Sales.** Each Owner must keep their garage and driveway in a neat and orderly condition. Garage doors must be closed when not in use. The use of front yards and garages for garage sales or other activities which clutter areas visible from the adjacent

streets for more than two (2) days within any twelve (12) month period is prohibited. Garage sales require prior written approval from the Board. The use of exterior signs advertising garage or yard sales is prohibited;

**(s) Clothes Lines.** The maintenance of outside clothes lines, except within fenced yards so as not to be visible from streets or the ground level of adjoining Lots;

**(t) Freestanding Structures.** Any structure erected or maintained in a backyard, which allows a person to stand on a surface more than twenty-four (24) inches above ground level or is over eight (8) feet in height without prior written approval of the Architectural Committee;

**(u) Exterior Lighting.** The installation of any exterior lighting whose source is visible from neighboring Lots, except for ordinary nondirectional bulbs that: (i) do not exceed 150 watts; and (ii) are white or yellow in color. This provision does not prohibit holiday lighting decorations temporarily installed for the Winter holiday season;

**(v) Utility Lines.** Except for temporary lines used during construction and for preexisting electrical lines installed prior to construction of the Project, all utility lines, including, but not limited to, electrical, gas, telephone, cable televisions and other communications must be underground, except for wires located on and colored the same as the Unit, access ports and above ground transformers;

**(w) Pets.** The keeping, raising, or breeding of animals, reptiles, or birds of any kind, on any Unit, is prohibited, except the following:

- (i) not more than two (2) dogs;
- (ii) two (2) cats;
- (iii) one (1) dog and one (1) cat;
- (iv) fish and other marine life kept in an aquarium; or
- (v) domestic birds such as parakeets kept in a cage in the Unit.

No animal which weighs more than 35 pounds is allowed within the Project. The keeping of animals for commercial purposes is prohibited. Unleashed dogs are prohibited within the Common Area. Animals may not be left chained or tethered in front of a Lot.

Occupants must prevent dogs and other pets from continuously barking, or making other loud noises, or defecating in the Common Area or on other Lots. Owners must immediately clean up any pet defecation on Common Areas or on other Owner's Lots. Animals which: (1) are kept in violation of this subsection; (ii) violate this subsection; or (iii) the Association finds to be vicious by nature or by temperament, must be removed by their owner from the Project upon order of the Association, and if not removed by the owner, may be removed by the Association and delivered to an animal shelter, pound, or animal control officer, without liability to the Association;

**(x) Signs.** The erection or maintenance of any signs on Common Area or Lots, whether commercial, political, or otherwise, which are visible from other Lots or Common Areas

is prohibited, except for the following, when in accordance with Association Rules regulating location:

- i. Such signs and notices as may be required by legal proceedings;
- ii. During the time of actual construction of an Improvement, job identification signs having a maximum face area of twenty-four (24) square feet per sign and of the type usually employed by lenders, contractors, subcontractors, and tradesmen, provided that such signs are located on or immediately adjacent to the Improvement under construction;
- iii. Appropriate safety, directional, and identification signs installed by the Association, or required by law, including appropriate Project identification signs;
- iv. Entrance signs and monuments;
- v. Not more than one (1) "for sale" or "for rent" sign in front of a Unit and one (1) such sign outside the project entrance gate. The Association may set standards for the location, dimensions, and design of such signs by Association Rule in conformance with Sections 712 and 713 of the California Civil Code and any applicable ordinances. If no applicable statute or ordinance regulates the size of the sign, the size permitted will be no more than three (3) square feet;
- vi. Signs which designate political ballot issues, nominees, and/or political parties, provided the combined total area of such signs does not exceed three (3) square feet and provided such signs are removed within twenty-four (24) hours after the appropriate election. The Association may set standards for the location and design of such signs by Association Rule. In no event will such political signs be permitted in any Common Areas;
- vii. Reasonable residential identification signs, including addresses and the name of the Owner or Occupant;

**(y) Window Coverings.** The hanging from, affixing to, or maintaining in any window, any signs not permitted under this section, or any aluminum or metal foil or other reflective materials. The characteristics and color of curtains, drapes, shades, blinds, or other coverings for any Lot, as seen from the front yard of such Lot, must conform to the Association Rules;

**(z) Removal of Trees.** No living tree may be destroyed or removed from the front of any Lot without the prior written consent by the Architectural Committee;

**(aa) Storage.** Nothing may be stored in the Common Area without the prior written consent of the Board;

Without limiting any of the foregoing, no Owner or Occupant may permit noise, sound(s) or sight(s) which would unreasonably disturb another's enjoyment of their Lot and/or the Common Area.

**Section 3.8. Exterior Improvements.** No Owner may at their expense or otherwise make any alterations or modifications to the exterior of their Unit and/or fences on the Owner's Lot without the prior written consent of the Board or the Architectural Committee, if any.

**Section 3.9. Termination of Mechanics' Lien Rights and Indemnification.** No labor performed or materials furnished to and incorporated in a Lot with the consent or at the request of the Owner thereof, Owner's family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees or any of their agents, contractors, or subcontractors, may be the basis for filing a lien against the Lot of any other Owner if said Owner has not expressly consented to or requested the same, or against the Common Area.

An Owner must indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of the other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Lot, at such Owner's request or with their consent.

The provisions of this section will not apply to any labor performed or materials furnished at the request of the management agent or the Board. At the written request of any Owner, the Association will enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Lot, the amount necessary to discharge any such lien, including all costs incident thereto.

**Section 3.10. No Waiver.** The Association's approval of any work done or proposed, or in connection with any other matter requiring its approval pursuant to this article, will not be deemed to constitute a waiver of any right to withhold approval as to any similar work or matter, whenever subsequently or additionally submitted for approval.

**Section 3.11. Variances.** Upon application by any Owner, the Board will be authorized and empowered to grant reasonable variances from the restrictions set forth in this article, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

**Section 3.12. Enforcement of Property Use Restrictions.** An objective of this Declaration is to promote and seek voluntary compliance by Owners and other occupants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13.6 hereof, the Owner responsible for the violation must receive written notice thereof and must be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice must describe the noncomplying condition, request that the Owner correct the condition within a reasonable time specified in the notice, and advise the Owner of their appeal rights.

## **ARTICLE IV: HOMEOWNERS ASSOCIATION.**

**Section 4.1. Management and Operation.** The Association must manage and operate the Project in accordance with applicable provisions of the Governing Documents and California Law, including law applicable to non-profit mutual benefit corporations and common interest developments.

**Section 4.2. Association Membership.** Every record Owner of a Lot is a Member of the Association. The Owner(s) of a Lot hold jointly one Membership in the Association for each Lot owned. The Membership is appurtenant to each Lot and may not be separated from ownership of the Lot to which it relates. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed. Tenants who are delegated rights of use pursuant to Section 2.3 hereof do not thereby become Members, although the tenant and members of the tenant's family will, at all times, be subject to the provisions of all Governing Documents.

Each Owner will remain a Member of the Association until their ownership in every Lot in the Project ceases, at which time their Membership in the Association will automatically cease. Membership in the Association will not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, Membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the Membership registered in the Owner's name to the purchaser of their Lot, the Association will have the right to record the transfer upon its books and thereupon any other Membership outstanding in the name of the seller will be null and void.

**Section 4.3. Voting.** Except as provided in the Bylaws, only Members will be entitled to vote, and only one vote may be cast for each Lot owned by said Member, as more particularly set forth in the Bylaws. When more than one person holds an interest in any Lot, all such persons will be Members, although in no event may more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended as provided in the Bylaws.

**Section 4.4. One Class of Membership.** The Association has one class of Membership and the rights, duties, and obligations of the Members are as set forth in the Governing Documents.

### **Section 4.5. Powers and Authority of the Association.**

**(a) Powers Generally.** The Association has the responsibility of owning, managing, and maintaining the Common Areas and Common Facilities and will discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Association and its Board have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of

California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board of Directors have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon are as set forth in this Declaration and Section 6.1 of the Bylaws.

**(b) Association's Limited Right of Entry.** In the Board's discretion, the Association, and/or its agent/representative have the right, when necessary, to enter any Lot, to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations, if any; (ii) obligations to enforce the architectural and land use restrictions of Articles III and VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subsection will be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all nonemergency situations, the Association or its agents will furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Lot, specifying the purpose and scheduled time of such entry and will make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Unit located on the Lot.

The Association's rights of entry under this subsection includes the right to transfer said rights of entry by permit, license, easement, or otherwise, for the benefit of the Association.

**(c) Reciprocal Easement Agreements.** The Association may enter into reciprocal easement agreements and joint use and maintenance agreements for use of roadways, parking areas, or other common use areas.

**Section 4.6. Board of Directors.** The Association will be managed by or under the direction of the Board. The number and qualifications of the Directors are as established in the Bylaws.

**(a) Powers of Board.** The Board has all of the powers and duties set forth in the Governing Documents:

**(i) Exclusive Power.** Except as expressly otherwise provided herein, the powers and duties of the Association which are not by the Governing Documents reserved to Members will be exclusively exercised and performed by the Board or such Committees or officers

as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws. Any power to be exercised or duty to be performed by the Association may not be exercised or performed by any Member individually without the written consent of the Board.

**(ii) General Powers of the Board.** Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board has the following powers:

**(A)** To call meetings of the Members.

**(B)** To appoint and remove all officers, committees (including the nomination and Architectural Committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 4.7), and require of them such security or fidelity bonds as it may deem expedient.

**(C)** To establish, fix, levy, assess and collect assessments against the Owners of Lots within the Project and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Association on its Members will be levied in accordance with and pursuant to the provisions of the Governing Documents.

**(D)** To authorize and cause the Association, subject to Section 4.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management may have a term of more than three (3) years and each such contract will be subject to all the other provisions hereof and will be terminable by either party without cause or payment of a termination fee on ninety (90) days written notice.

Any reference to the “term” of a contract as used in this subsection does not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

**(E)** To adopt, amend, and repeal Association Rules consistent with this Declaration relating to (1) the maintenance, repair, management and use of the Common Area and all facilities thereon by Owners, their tenants, guests and invitees or any other persons who have rights of use and enjoyment of such Common Area and Common Facilities, including the right to restrict the use of certain land, facilities, air space, or structures to the Association or its officers, agents or employees; (2) minimum standards for the maintenance of landscaping or other improvements located on any Lot; (3) architectural control and the rules governing the Architectural Committee under Article VIII; (4) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article III hereof; (5) the conduct of an Owner, its family, contract purchasers, tenants, lessees, guests, invitees, or licensees, with respect to the Project and the other Owners or occupants of the Project; (6) the conduct of disciplinary proceedings in accordance with Section 13.6 hereof; (7) reasonable charges for labor, services, or expenditures incurred at the request of an Owner or as a result of the actions of an Owner; (8) collection and disposal of refuse; (9) the

interpretation of provisions of, and terms used in, this Declaration (said interpretation will be conclusively presumed to be correct so long as it is not inconsistent with this Declaration.); and (10) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules may not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents will be deemed to prevail.

The Association must give Notice to each Owner and Notice to each Occupant requesting such notice of the Association Rules as they may, from time to time, be adopted, amended, or repealed. The Association must also post a copy of the Association Rules, as they may be adopted, amended, or repealed from time to time, at one (1) or more reasonable locations in the Common Area. Upon such notice and posting, the Association Rules will have the same force and effect as if they were set forth in and were a part of this Declaration. Any Association Rule relating to the health or safety of occupants or other persons coming upon the Project will take effect upon adoption if the Rule so states.

(F) To delegate its powers to committees, officers, or employees of the Association (subject to Article X of the Bylaws).

(G) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber property of the Association as security for the repayment of such debt.

(H) To grant easements on, over, under, across, and through the Property for public utility and other purposes consistent with the provisions of this Declaration.

(I) Except as expressly otherwise provided herein, the Board has the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(J) Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(K) Bring and defend actions on behalf of two or more Members or the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. Prior to filing litigation regarding any disciplinary action against a Member, the Board must comply with the requirements set forth in Section 13.6.

**(iii) No Active Business.** The Board does not have the power or authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them.

**(b) Duties of Board.** The Board has the following duties:

**(i) Association Duties.** To cause to be properly performed all duties imposed on the Association by the Governing Documents.

**(ii) Records.** To cause to be kept a complete record of all its acts and corporate affairs, and to prepare budgets and financial statements for the Association.

**(iii) Supervise.** To supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

**(iv) Assessments.**

**(A)** To fix, levy and collect assessments pursuant to the provisions of Article V of this Declaration.

**(B)** To approve the annual budget and fix the amount of the assessment against each Member for each assessment period at least thirty (30) days in advance of such date or period;

**(C)** To prepare a roster of the Members and assessments applicable thereto which must be kept in the office of the Association and subject to California law must be open to inspection by any Member;

**(D)** To send written notice of each assessment to every Member subject thereto; and

**(E)** To issue or cause an appropriate officer to issue certificates as required by Sections 5.12 and 8.7.

**(v) Insurance.** To contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

**(vi) Vacancies.** To fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall (*See* Section 6.6 of the Bylaws).

**(vii) Discharge of Liens.** To pay any amount necessary to bond or discharge any claim which may be or become a lien or encumbrance levied against the Property as a whole or any part thereof which constitutes a lien against the Common Area, rather than merely against the

interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they will jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens will be assessed against each such Owner and its Lot as provided in Section 5.4. No decision resulting in such liability or assessment will be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 13.6 of this Declaration.

**(viii) Enforcement.** To commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of this Declaration, the Articles, the Bylaws, the Association Rules, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing. In addition, the Board may suspend the voting rights of an Owner or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the accused Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 13.6 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association will have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of their Lot, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (a) a judgment of a court, (b) a decision arising out of arbitration, (c) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

In the event any action, whether legal or judicial, is instituted by the Association pursuant to this section, the Association will be entitled to all costs incurred including court costs and reasonable attorneys' fees.

**(ix) Operating Requirements.** To obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Project, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Lots, the costs thereof will, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

**Section 4.7. Limitations on Powers of the Association.** Neither the Board nor the Association have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

**(a)** Entering into a contract with a third person to furnish goods or services for the Common Area, the Lots or the Association for a term longer than one (1) year with the following exceptions:

**(i)** A management contract, of a Lot, provided that no management contract may have a term exceeding three (3) years.

**(ii)** A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract may not exceed the shortest term for which the supplier will contract at the regulated rate.

**(iii)** Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

**(iv)** A contract to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or the benefit of the Association pursuant to Section 4.6.

**(v)** Agreements for cable television services and equipment or satellite dish television services and equipment not to exceed five (5) years' duration.

Any reference to the "term" of a contract as used in this Subsection 4.7(a) will not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

**(b)** Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

**(c)** The Association incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Any work necessary to repair an existing Improvement, to the extent the expense for which is already funded by a reserve fund, is not a capital improvement for this purpose.

**(d)** Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

**(e)** Filling a vacancy on the Board caused by the removal of a Director.

**Section 4.8. Limitation on Liability of Officials.** To the fullest extent permitted by law, neither a Director, Officer, Committee of the Association, or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), will be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be the scope of its duties.

**(a) Claims Regarding Breach of Duty.** No Released Party will be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability will extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

**(b) Other Claims Involving Tortious Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association may recover damages from such Board Member or officer if all of the following conditions are satisfied:

- (i)** The Board Member or officer is an Owner of no more than two Lots;
- (ii)** The act or omission was performed within the scope of the volunteer Board Member's or officer's Association duties;
- (iii)** The act or omission was performed in good faith;
- (iv)** The act or omission was not willful, wanton, or grossly negligent;
- (v)** The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than \$500,000.

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Association duties will not affect that person's status as a volunteer Board Member or officer for the purposes of this section. However, any director or officer who receives

direct or indirect compensation from a financial institution that acquired a Lot within the Project as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 1365.7. In the event that Section 1365.7 is amended or superseded by another similar provision of the California statutes, this Subsection (b) will be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

## **ARTICLE V: ASSESSMENTS.**

### **Section 5.1. Assessments Generally.**

**(a) Covenant to Pay Assessments.** Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it is so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance will be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board will deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens as hereinafter provided.

Each such Assessment will be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Area or by abandonment.

**(b) Extent of Owner's Personal Obligation for Assessments.** The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection will run with the land, so that each successive Owner or Owners of record of any Lot within the Project will, in turn, become liable to pay all Assessments and charges assessed during the time they are record Owner of such Lot. All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, will be a separate, distinct and personal debt and a personal obligation of the person who was the Owner of the Lot at the time the Assessment was levied.

Any grantee and/or Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) will be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and will not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

After a record Owner transfers, of record, any Lot they own, they will not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner will remain the debt of such previous Owner against whom assessed and the

previous Owner will remain personally liable. A contract seller of any Lot will continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County.

**(c) Authority of Board.** Within the limits of the applicable laws, the Board has the power, duty and authority to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board may not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

The Board has the power and authority to levy Special Individual Assessments against Owners.

**(d) Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, are a charge on Lots against which such Assessments are imposed and constitute a continuing lien upon the Lots. Subject to Sections 5.4(b), 13.6(d)(ii), and the Association's Delinquent Assessment Collection Policy, or Rules, if any, any lien for unpaid Assessments created pursuant to the provisions of this Article V may be subject to foreclosure as provided in Section 5.9 hereof. The Association has a separate lien and a separate lien is hereby created arising as of the recordation of this Declaration upon each Lot against which an Assessment is imposed to secure the payment of any such Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, made under this Article V. The lien provided for herein will continue to secure all such Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, imposed on any Lot notwithstanding the transfer of record title to such Lot, and any such transfer will be subject to the Association's lien, as long as prior to such transfer a Notice of Delinquent Assessment has been recorded as provided in this Declaration and by law. The priority of all such liens on each Lot will be in inverse order so that upon the foreclosure of the lien for any particular Assessment, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, on any Lot, any sale of such Lot, pursuant to foreclosure of the lien, will be made subject to all liens securing the respective Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, on such Lot for succeeding periods of time. Further, the priority of any Lien created pursuant to this article will arise at the earliest of the following two (2) dates: (1) the date that this Declaration was recorded or (2) the date that the notice of delinquent assessment (pursuant to Civil Code Section 1367 or comparable superseding statute) was recorded.

**(e) No Avoidance of Assessment Obligations.** No Owner may exempt themselves from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by them from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of their Lot or any other portion of the Project.

**(f) Offsets.** All Assessments levied by the Board will be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment will be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

## **Section 5.2. Regular Assessments.**

**(a) Purpose of Regular Assessments.** All Regular Assessments levied by the Association will be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the occupants of the Project and, in particular, for the maintenance, operation and improvement of the Lots, Common Area, and any real or personal property in which the Association holds an interest.

**(b) Annual Budget; Regular Assessments and Board Authority.** Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board must estimate the total amount required to fund the Association's anticipated expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements of Section 12.5 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board will not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws. For the purposes of this subsection, quorum means a majority of the Members.

**(c) Board or Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) will become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (a) and (d), the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members casting a majority of the votes at a duly called meeting or election of the Association. For the purposes of this subsection, quorum means a majority of the Members.

**(d) Assessments to Address Emergency Situations.** The requirement of a Membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment will not apply to Assessment increases necessary to address emergency situations. For purposes of this Subsection (d), an emergency situation is any of the following:

- (i)** An extraordinary expense required by an order of a court.

**(ii)** An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

**(iii)** An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (b), above, provided that, prior to the imposition or collection of an assessment under this Subsection (d)(iii), the Board passes 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 Board's resolution must be distributed to the Members together with the notice of assessment.

**(iv)** An extra ordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

**(e) Allocation of Regular Assessment.** Except with respect to the costs of the painting of the exteriors of the Units, the total estimated Common Expenses, determined in accordance with Subsection (b), above, will be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

The costs of painting the exteriors of the Units will be included in the regular assessments and will be allocated among each Lot as follows: Each Lot with a two-story Unit will be allocated 2.463 % of the total cost; Each Lot with a one-story Unit will be allocated 1.847% of the total cost; and each Lot with a half-plex Unit (a Unit that is attached by a party wall (in addition to being attached by a fence) to another Unit) will be allocated 1.354% of the total cost. Subject to California law, including but not limited to Civil Code Section 1366, these painting cost allocations may be modified by the Board.

**(f) Failure to Make Estimate.** If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 5.3 for that year, will be automatically assessed against each Owner and their Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment will be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, will not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner will not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

**(g) Assessment Due Date, Installment Payments and Delinquency.** The Regular Assessment levied against each Owner and their Lot will be due and payable on the first day of each fiscal year thereafter. The Board has the discretion of collecting assessments in a lump sum at the start of the Association's current fiscal year.

However, the Board may allow Owners to pay the Regular Assessment for the current fiscal year in twelve (12) equal monthly installments so long as the respective Owner is not in default (*i.e.*, current on all assessments). Each monthly installment is due on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board of Directors. Regular Assessments of Members choosing monthly installments will be 5% greater than those paying in a lump sum for the entire year.

Installments of Regular Assessments will be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due. In the event of a default in the payment of any installment, the Association may declare the entire balance of that Owner's Regular Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

**(h) Mailing Notice of Assessment.** The Board of Directors must mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than forty-five (45) days prior to the beginning of the next fiscal year.

### **Section 5.3. Special Assessments.**

**(a) Purposes for which Special Assessments may be Levied.** Subject to the Membership approval requirements set forth in Subsection (b), below, the Board has the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

**(i) Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Subsection 5.2(b), the Board of Directors will levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

The Board's assessment authority pursuant to this Subsection 5.3(a)(i) is subject to Membership approval requirements under the circumstances described in Subsection 5.2(b).

**(ii) Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Area (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including

the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX hereof.

**(b) Special Assessments Requiring Membership Approval.** No Special Assessments described in (i) Section 5.3(a) hereof, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last two (2) sentences of Section 5.2(b), may be made without the vote or written approval of the Owners consisting of a majority of the votes at a duly called meeting or election of the Association conducted in accordance with the Bylaws. The Owner approval requirement will not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d). For the purposes of this subsection, quorum means a majority of the Members.

**(c) Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment will be divided among, assessed against and charged to each Owner and their Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied must be mailed to each Owner.

Special Assessments for purposes described in Section 5.3(a)(i) will be due as a separate debt of the Owner and a lien against their Lot. Unless the time for payment is extended by the Board, payment of all Special Assessments will be due thirty (30) days after the Board gives the Owners written notice thereof or within such extended period as the Board will determine to be appropriate under the circumstances giving rise to the Special Assessment.

The Board may, in its discretion, prorate the amount of any permitted Special Assessment over the remaining months of the fiscal year. The monthly prorated amount of the Special Assessment will be due and payable at the same time as the Regular Assessment monthly installments.

Installments of Special Assessments will be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due. In the event of a default in the payment of any installment, the Association may declare the entire balance of that Owner's Special Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

#### **Section 5.4. Special Individual Assessments.**

**(a) Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (i) through (v), below or as otherwise provided in the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13.6 hereof, and, if appropriate, has been given a

reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Unit which the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, the Board will cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) will be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(ii) Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or their Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) will be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(iii) Required Maintenance on Lots.** As more particularly provided in Subsections 4.5(b) and 6.3(b) (and without limiting the generality of those subsections), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association will have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(iv) Diminution in Insurance Proceeds.** The Association will levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

**(v) Increase in Insurance Burden.** The Association has the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of Subsection 3.7(c), caused any increase in the insurance rate paid by the Association, to reimburse the Association for any such increase in the rate of insurance.

**(b) Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Section 5.4(a), notice thereof will be mailed to the affected Owner and

the Special Individual Assessment will thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments will be delinquent if not actually received by the Association or its designated agent by the thirtieth (30th) day after mailing of notice of the Assessment. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

Special Individual Assessments imposed pursuant to this section may become a lien against the Member's Lot. Unless prohibited by law, that lien may be enforced by nonjudicial foreclosure pursuant to Section 5.9 or in an action at law.

**Section 5.5. Reasonableness of Assessments.** Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that will be binding on the Owner's heirs, successors and assignees, provided that the personal obligation of each Owner for delinquent Assessments will not pass to the Owner's successors in title unless expressly assumed by them.

**Section 5.6. Exemption of Certain Parts of the Project from Assessments.** The following real property subject to this Declaration will, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Project dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

**Section 5.7. Notice and Procedure for Member Approval.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members will be solicited either by written ballot conducted in accordance with Corporations Code Section 7513 and Section 4.6 of the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with Section 5.4 of the Bylaws. The quorum required for such Membership action is a majority of the Members.

### **Section 5.8. Maintenance of Assessment Funds.**

**(a) Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, must be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has branches located within Sacramento County, which accounts must be clearly designated as either "CAMINO VILLAGE HOMEOWNERS ASSOCIATION

OPERATING ACCOUNT” or “CAMINO VILLAGE HOMEOWNERS ASSOCIATION RESERVE ACCOUNT.” In addition, the Board may make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Association as the Board may designate, have exclusive control of said account(s) and investments and will be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts are subject to the minimum signature requirements imposed by California Civil Code Section 1365.5 and Section 12.2 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained.

**(b) Separate Accounts and Commingling of Funds.** Except as provided below, the proceeds of each Assessment may be used only for the purpose for which such Assessment was made, and such funds will be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association must maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 must be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts must be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds must be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

## **Section 5.9. Collection of Assessments; Enforcement of Liens.**

**(a) Delinquent Assessments.** If any lump sum or installment payment of a Regular Assessment, Special Assessment, or Special Individual Assessment assessed to any Owner is not actually received by the Association or its designated agent within fifteen (15) days after the same

becomes due, such payment will be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code Sections 1366(c) and 1366.1 or comparable superseding statutes.

If the Association deposits a check tendered by an Owner for the payment of an Assessment, and the bank holding the account upon which the check is drawn returns the check as unpaid, the Association may require such Owner to pay a "bad check charge" in an amount which the Association may prescribe by Association Rule as compensation to the Association for the additional costs incurred in handling the check. Such a "bad check charge" may include any charges imposed on the Association by a bank for handling or processing the return of the check. Such a "bad check charge" will constitute an additional assessment collectible together with the assessment for which it was charged.

**(b) Effect of Nonpayment of Assessments.**

**(i) Enforcement of Lien for Delinquent Assessments.** Subject to Section 5.4(b) and the Association's Delinquent Assessment Collection Policy, or Rules, if any, the Association may cause to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association. Such Notice of Delinquent Assessment will relate back to the date of recordation of this Declaration. The Notice of Delinquent Assessment must set forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article V and California Civil Code Section 1366, (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association must cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

**(ii) Remedies Available to the Association to Collect Assessments.** Subject to California law, the Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Subject to California law, foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale of a Lot by a trustee acting pursuant to this Section 5.9 must be conducted in accordance with California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust.

**(iii) Nonjudicial Foreclosure.** Nonjudicial foreclosure will be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice will state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any

Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default will state the election of the Association to sell the Lot or other property to which the amounts relate and will otherwise conform with the requirements for a notice of default under California Civil Code Section 2924c, or comparable superseding statute.

Each of the Owners does, by mere acceptance of a deed to a Lot, grant and appoint the Association as trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association will have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association will be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association will be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(iv) **Judicial Foreclosure.** In the event foreclosure is by action in court, reasonable costs, including attorneys' fees will be allowed.

(v) **Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

**Section 5.10. Transfer of Lot by Sale or Foreclosure.** The following will govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Except as provided in Subsection (b), below, the sale or transfer of any Lot will not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) However, the Association's assessment lien will be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other mortgage or lien recorded before this Declaration.

**(c)** No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will relieve the new Owner of that Lot (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

**(d)** Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by Subsection (b), above, will be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and their successors and assigns.

**(e)** No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, will affect the Association's right to maintain an action against the foreclosed upon previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**Section 5.11. Priorities.** Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V will have priority, as of the date of recording of this Declaration applicable to the Project, over all other liens and encumbrances applicable to the Lots, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any First Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination will apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage or deed of trust, or other prior encumbrance.

**Section 5.12. Estoppel Certificate.** A certificate executed by any two (2) members of the Board setting forth the amount of any due and unpaid assessments with respect to a Lot (or the fact that all assessments due are paid, if such is the case) will be conclusive against the Board, the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner will be entitled to such a certificate within ten (10) days after demand therefor and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in Sacramento, California, and if there is no such bank, then a major bank with headquarters in San Francisco, California.

**Section 5.13. Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes will be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**Section 5.14. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose

of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the Association after providing written notice to the defaulting Owner may, in its discretion, revoke the authority allowing the defaulting Owner to collect and retain such rents and other monies.

Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 5.14 will be subordinate to the rights of any First Mortgagee.

**Section 5.15. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

## **ARTICLE VI: MAINTENANCE RESPONSIBILITIES.**

The Project must be maintained, repaired, and replaced in an attractive, safe, and sanitary condition as follows:

**Section 6.1. Maintenance by the Association.** The Association must maintain, repair, and replace the following:

**(a) Common Area.** Common Area and all Improvements on Common Area, including but not limited to, the wall at the boundary of the Project, Fallwater Lane, including parking spaces on Fallwater Lane, the entry gate, any installed telephone/intercom system, pole light, and sign lights. The Association will pay for any street light electricity.

**(b) Lots.**

**(i)** Landscaping on all Lots up to the front exterior walls or fences of the Units, excluding the landscaping located between the entry wall and El Camino Avenue (Lots A and B as shown on the Map). The Association's maintenance of landscaping on Lots includes proper trimming, planting, mowing, weeding, and fertilizing at reasonable regular intervals. The Association is not responsible for any other parts of the Lots, except as provided in the following subsection.

**(ii)** Painting of the exteriors of all Units. The Association will assess the Owners for the painting as set forth in Section 5.2(e).

**(iii)** The Association is not responsible for any other kind of maintenance, repair, or replacement of the Units or any maintenance, repair, or replacement of any other components of the Units, including, but not limited to, the repair and maintenance of the Units as may be occasioned by the presence of wood-destroying pests or organisms. The Association will assess the Owners for the painting unequally as set forth in Section 5.2(e).

**Section 6.2. Maintenance by Owners.** Each Owner, must, at such Owner's sole cost and expense, maintain, repair, and replace as follows:

(a) Such Owner's Lot, except as provided in Section 6.1, including the driveway located on the Lot;

(b) Landscaping on such Owner's Lot and Benefit Easement, except as provided in Section 6.1, including proper trimming, mowing, watering, planting, weeding, replacement, fertilization, removal and/or replacement of dead, decaying, and/or destroyed vegetation, and maintenance and repair of water control timing units;

(c) Any water and sanitary sewer laterals serving only such Owner's Lot; and

(d) As set forth in section 2.6, fences between two Lots are the joint responsibility of the Owners of the two Lots. Each Owner must pay one-half (1/2) of the cost of such maintenance, repair, and replacement except as otherwise provided in Section 2.6.

### **Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.**

(a) In the event that the need for maintenance, repair, or replacement which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs will be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 13.6.

(b) In the event that an Owner fails to perform maintenance functions for which the Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within thirty (30) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Subsections 4.5(b) and 5.4(a) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.6, hereof.

**Section 6.4. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association must cooperate in the performance of maintenance, repair, or replacement work.

### **Section 6.5. Capital Improvements.**

(a) **Petition; Association Approval; Owner Approval.** A majority of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of capital improvements on or to the Common Area. Such petition must be in such form and must contain such information as the Association may require, including, without limitation,

preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own motion move for the construction, installation or acquisition of a capital improvement, in which case such motion will be treated as if it were a petition duly submitted by an Owner.

**(b) Approval of Petition.** The Association may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area and/or the Lots, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

**(c) Bids.** Upon the approval of such petition by the Association, the Association must obtain firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement, and the lowest acceptable bid or bids will be deemed the estimated total cost of such capital improvement.

**(d) Approval by Owners.** If during the fiscal year, aggregate expenditures for capital improvements exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Association must present the proposed capital improvements and the estimated total cost thereof to all Owners. If two-thirds (2/3) of the voting power of the Association approves such capital improvements and such estimated total cost by vote or written consent, the proposed capital improvements will be deemed approved and a Special Assessment for Capital Improvement will be levied as provided in Section 5.3.

**(e) Construction.** After the levy of the Capital Improvement Assessment, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such capital improvement as determined above, the Association will construct, install, acquire, or contract for the construction, installation or acquisition of the proposed capital improvement.

**(f) Expenses for Improvement Not Approved.** If for any reason the construction or acquisition of the proposed capital improvement is not approved by the Association or the Owners, all expenses incurred by the Association with respect to the proposed capital improvement will be paid proportionately by the petitioning Owners. The Association may levy a Special Individual Assessment pursuant to Section 5.4 against said Owners for the purpose of paying such expenses. If the proposed capital improvement was initiated by the Board, such expenses will be paid by the Association.

## **ARTICLE VII: EASEMENTS & RESERVATIONS.**

**Section 7.1. Encroachment Easements.** Each Lot and its Owner has and is granted an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event will a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to willful misconduct of the Owner. In the event a Unit is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over adjoining Lots and the Common

Area will be permitted and there will be valid easements for the maintenance of the encroachments as long as they exist.

**Section 7.2. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Project for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, gas, telephones, drainage and electricity and the master television antenna or cable television system if any, and similar public or quasi-public improvements or facilities.

By virtue of this easement, it will be expressly permissible for the providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Project except as the Project was initially designed or thereafter as approved by the Association's Board of Directors. The easements provided for in this Section 7.2 will in no way effect any other recorded easement on the Project.

**Section 7.3. Maintenance Easements.** An easement is hereby granted to the Association to enter in or to cross over the Common Area, Lots, and areas that the Association is obligated to maintain, to perform the duties of maintenance and repair of the Lots, Common Area, or Common Facilities, and the duties of enforcement of the Governing Documents provided that any entry by the Association or its agents into any Lot may only be undertaken in strict compliance with Section 4.5(b).

**Section 7.4. Benefit Easements.** The rights of Owners of the use of a portion of the side yard of an adjoining Lot Owner are set forth in that certain document entitled "Declaration of Use Easements Agreement," recorded in the Office of the Sacramento County Recorder on December 8, 1993, as Instrument No. 2135.

## **ARTICLE VIII: ARCHITECTURAL COMMITTEE: ARCHITECTURAL REVIEW.**

**Section 8.1. Architectural Committee.** There may be an Architectural Committee, whose composition and operations are subject to this section.

**(a) Composition.** The Architectural Committee will consist of three (3) members. The Board will appoint all the members of the Architectural Committee, who may be members of the Board. Every person appointed to the Architectural Committee by the Association will be a Member of the Association except that one member may be an engineer, architect, or other expert trained in the review of construction plans or in inspections of Improvements who is not a Member of the Association.

**(b) Term of Members.** Each member of the Architectural Committee will hold office until such member resigns or is removed by the Board.

**(c) Operations.** The Architectural Committee will meet from time to time as necessary to perform its duties, and will keep a record of all action taken at such meetings or otherwise. The vote or written consent of a majority of the Membership of the Architectural Committee will constitute an act by the Architectural Committee, unless a unanimous vote or consent is otherwise required. The members of the Architectural Committee will receive no compensation for services rendered, although they may be reimbursed for such actual expenses as the Board determines are just and reasonable. Expenses for which reimbursement is sought must be supported by a proper receipt or invoice.

**Section 8.2. Powers and Duties of the Architectural Committee.** The Architectural Committee will have both the power and duty to take the following actions.

**(a) Rules.** The Architectural Committee may adopt, amend, and repeal, from time to time and by unanimous vote, rules and regulations, to be known as "Architectural Committee Rules," that interpret or implement the provisions of this Article and that provide for the designation of plans, specifications or other documents or things required as a prerequisite for consideration of proposed work.

**(b) Records.** The Architectural Committee must maintain with the corporate records of the Association, for inspection by any Owner, a copy of the Architectural Committee Rules, as they may be adopted, amended, or repealed, certified by any member of the Architectural Committee.

**(c) Action on Requests.** The Architectural Committee must approve, conditionally approve, deny, or take any other appropriate action upon such proposals or plans as are submitted to it from time to time, in accordance with the Declaration.

**(d) Other Duties.** The Architectural Committee will perform such other tasks as are given to it under the Declaration.

**(e) Notice of Violations.** The Architectural Committee will notify the Association of any Improvement constructed, reconstructed, refinished, altered or maintained in violation of this Article. The Association may, upon thirty (30) days written notice to the Owner of such non-complying Improvement, remove or cause to be removed or brought into conformity with the Declaration, such Improvement, or require the Owner to do so. In either case, such Owner must reimburse the Association for all expenses incurred in connection therewith, including reasonable fees and costs.

**Section 8.3. Matters Requiring Committee Approval.** No Owner, without the approval of the Architectural Committee, may construct, reconstruct or recolor, refinish, alter, or maintain any part of the exterior of any Improvement, excluding antennas and satellite dishes pursuant to State or Federal law, including solar energy systems and the addition or placement of accessory Buildings, or alter the topography or natural or existing surface drainage of the Project, utility lines (wire or conduit) on or over any Lot or Common Area, or landscape or landscaping in any yard visible from a public road or Common Area. If such work does not constitute a material change in the design or color of Improvements already approved in accordance with this Declaration, it will be sufficient for

an Owner to notify the Architectural Committee in writing before commencing the work, and prior approval by the Architectural Committee will not be required unless the Architectural Committee determines that such work constitutes a material change. Association approval does not allow the applicant to violate any provision of this Declaration nor does it in any way exempt the applicant from complying with the building and fire codes, building permit requirements, and other governmental requirements. The approval of lot splitting, lot consolidation, and rezoning is governed by Section 12.3.

**Section 8.4. Architectural Committee Approval.** The procedure and criteria for Architectural Committee approval are as follows:

**(a) Procedure.**

**(i) Application.** Owners proposing to do any work for which approval of the Architectural Committee is required under Section 8.3 will apply to the Architectural Committee as follows:

**A.** Owners will submit applications to the Architectural Committee for the proposed Improvements. The application will be made by submitting to the Committee for approval, in duplicate, such plans and specifications for the proposed work as the Architectural Committee may from time to time request including when deemed appropriate by the Architectural committee: (i) floor plans; (ii) colors of exterior materials and colors with samples; (iii) exterior elevations; (iv) roof plans; (v) landscaping plans; (vi) site plans showing the placement of the Improvements on each Lot; and (vii) the proposed construction schedule.

**B.** The Architectural Committee may require that the submission of plans and specifications be accompanied by a fee to defray the actual cost of the review of plans and specifications the amount of which will be set by the Architectural Committee from time to time but may not exceed one-tenth of one percent (1/10 of 1%) of the estimated cost of the work or one hundred dollars (\$100.00) whichever is greater.

**(ii) Form of Approval.** The approval must be in writing and may be conditioned upon the submission by the Owner of such additional plans and specifications as the Architectural Committee in its absolute discretion deems appropriate.

**(iii) Inaction.** Applications made in accordance with this section that are not acted upon within sixty (60) days from the date of submission thereof will be deemed approved.

**(iv) Return of Plans.** If the application is approved, the Architectural Committee will return to the Owner one set of plans and specifications as finally approved and bearing the endorsement of the Architectural Committee. If the Owner originally furnished only one (1) set of plans and specifications to the Architectural Committee and the Architectural Committee waived the requirement of such plans and specifications in duplicate, the Architectural Committee may retain such plans and deliver to the Owner written Notice of the approval of such plans.

**(v) Hearing on Disapproval.** If plans are disapproved by the Architectural Committee, the applicant is entitled to a hearing before the Board at a regular or special Board meeting if the applicant gives written notice to the Association within thirty (30) days following the disapproval of the plans. The hearing will be set within thirty (30) days following receipt of the notice unless the Association and the applicant agree otherwise.

**(b) Criteria.** The Architectural Committee will approve the work only in accordance with the criteria set forth in this subsection. Architectural Committee approval does not allow the applicant to violate any provision of this Declaration nor does it in any way exempt the applicant from complying with building and fire codes, building permit requirements and other governmental requirements.

**(i) General.** The Architectural Committee may not consent to any Improvements described in this Article unless the Owner has submitted the materials required by the Architectural Committee.

**(ii) Findings Required.** The Architectural Committee may not do or consent to any Improvements described in Section 8.3 unless the Architectural Committee finds that: (i) the proposed work conforms to this Declaration, the applicant has obtained or will obtain a building permit if necessary, the proposed work conforms to all governmental requirements, and the work is consistent with the architecture and design of Improvements in the Project; (ii) general architectural considerations, including the character, scale, and quality of the design, its architectural relationship with the design of Improvements in the Project, and the building materials, colors, screening, exterior lighting and similar elements are incorporated into the design in order to ensure the compatibility of the proposed Improvement with the character of adjacent dwellings and Improvement.; (iii) general site considerations, including site layout, open space and topography, orientation and location, vehicular access, circulation and parking, setbacks, height, walls, fence. and similar elements have been designed to provide a desirable environment; and (iv) general landscape considerations, including the location, type, size, color, texture, and coverage of plant materials provision for irrigation, maintenance, and protection of landscaped areas and similar elements have been incorporated to ensure visual relief, to complement homes and structures, and to provide an attractive environment for the use of occupants and for the enhancement of property values in the Project. If the plans are disapproved, the Architectural committee will make written findings as to the reasons for the disapproval.

## **Section 8.5. Completion and Inspection.**

**(a) Completion of Improvements; Extension.** Upon receipt of the approval from the Architectural Committee, the Owner must, as soon as practicable, satisfy any conditions of such approval and diligently proceed with the commencement and completion of all work within one (1) year of the date of such approval. The Architectural Committee may extend the one (1) year period if: (i) the Owner makes a written application to the Architectural Committee setting forth the reason for the requested extension; and (ii) the Architectural Committee finds that the Owner has pursued the work diligently and in good faith. If the Architectural Committee approves the extension, the Architectural Committee will, in writing, notify the Owner of the length of the extension. If the

Owner fails to complete the work within one (1) year and any applicable extension period, the approval will be deemed revoked and the work may be treated as having been constructed in violation of this Article. Nothing in this subsection imposes a requirement upon the Architectural Committee to extend such one (1) year period.

**(b) Inspection of Improvements.** Upon completion of the work, the Owner must give a notice of the completion of the Improvement, in writing, to the Architectural Committee. The Architectural Committee, directly or through its authorized representative, may inspect the work for compliance with the approved plans. The Architectural Committee will notify the Owner of any noncompliance, in writing, and require the remedy thereof, within sixty (60) days from receipt of Owner's notice of completion. If the Architectural Committee fails to give a noncompliance notice, the Improvement will be deemed to have been completed in accordance with this Article. If notice of noncompliance is given within such sixty (60) days period, and the Owner fails to remedy such noncompliance within sixty (60) days after receipt of such notice, the Architectural Committee may act in accordance with the provision of Section 8.6.

**Section 8.6. Noncompliance.** If Improvements are installed that are not in compliance with the Declaration, the Association may either remove the Improvement or remedy the noncompliance, or require the Owner to do so. In any such case, such Owner must reimburse the Association for all expenses incurred in connection therewith, including reasonable attorneys fees and costs whether or not an action is instituted. No Improvement may be removed from, or a noncompliance remedied on, a Lot without either the consent of the Owner of the Lot or an order obtained from a court of competent jurisdiction.

**Section 8.7. Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee fixed by the Association to cover costs, the Association will provide such Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date of the certificate, either: (i) all Improvements and other work made or done on such Lot by the Owner, comply with this Declaration; or (ii) such Improvements or work do not so comply, in which event the certificate will also identify the noncomplying Improvements and work, and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any secured party, will be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners, and such purchaser or secured party.

**Section 8.8. Limitation of Architectural Committee Liability.** Neither the Architectural Committee, the Association, nor any member of the Architectural Committee will be liable to the Association, any Owner, or any other person for any damage, loss or prejudice suffered or claimed on account of: (i) the approval of any plans, drawings, or specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development, or manner of development, of any property within the Project; (iv) the execution and recordation of an estoppel certificate, whether or not the facts stated therein are correct, provided, however, that the officer executing the Certificate has acted in good faith. In any case, the Architectural Committee or any Member of the Architectural Committee, may,

but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to the Architectural Committee.

**Section 8.9. Owner's Liability.** Any Owner who alters any portion of the Project, or causes any alteration to the Project, will be responsible and liable for any damage to Common Area or other Lots resulting from such alteration, and will be responsible and liable for any violation of any law or governmental regulation resulting from such alteration.

**Section 8.10. Mechanics' Liens.** No Owner may permit any mechanics' lien to arise, in connection with any work initiated by such Owner, upon the Common Area or any other Lot not owned by such Owner. Should such a lien arise, the Owner who initiated such work must immediately take all necessary steps to remove such lien, including, if necessary, the obtaining of a bond, and must indemnify the Association and all Owners against, and hold them harmless from, such lien and any costs incurred in removing such lien, including reasonable attorneys' fees. If any Owner fails to promptly pay all such costs upon the written demand of the Association, the Association may levy a Special Individual Assessment, in accordance with Section 5.4 against such Owner for such amounts.

**Section 8.11. Property to be Annexed.** Any owner of property not within the Project who wishes to have such property annexed to the Project in accordance with the Declaration, may seek approval of such owner's plans and specifications for Improvements to be made to such property, prior to such annexation. Any such approval given by the Architectural Committee in accordance with this Article will have the same effect as if the property had already been annexed to the Project.

## **ARTICLE IX: INSURANCE.**

**Section 9.1. Types of Insurance Coverage.** The Association must purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance with the coverages described below:

**(a) Fire and Casualty Insurance.** The Association must obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the Improvements within the Common Area and on any Common Facilities, excluding land, foundations, excavations and other items normally excluded from coverage. The insurance must be kept in full force and effect at all times and the full replacement value of the insured property must be redetermined on an annual basis.

Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Subsection 9.1(a) will contain (1) an agreed amount endorsement or its equivalent, (2) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, (3) an extended coverage endorsement, (4) vandalism, malicious mischief coverage, (5) loss or damage by fire coverage, (6) other standard extended-coverage risks and all other perils customarily covered in properties similar in construction,

location and use, including all perils normally covered by the standard "all risk" endorsement, and (7) a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The policies required hereunder must provide amounts or coverage as may be determined by the Board and if practical, must be in amount or amounts necessary to provide for full replacement (one hundred percent (100%) of current replacement cost). The policies must name as insured the Association, all Owners and all Mortgagees as their respective interests may appear and must further provide for a separate loss payable endorsement in favor of the First Mortgagee of each Lot. The policies may also contain a loss payable endorsement in favor of the insurance trustee described in Section 9.6 below.

**(b) Public Liability and Property Damage Insurance.** To the extent such insurance is available at reasonable premium, the Association must obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance must not be less than two million dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance must include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to properties similar in construction, location and use.

**(c) Fidelity Bonds/Insurance.** The Board must also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and reserves and must contain an endorsement for officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. If the Association has delegated some or all of the responsibility for the handling of funds to a management agent, a bond must be obtained for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The bonds must name the Association as an obligee and must contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

**(d) Personal Property Insurance.** The Board may purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable, or that is required by any institutional First Mortgagee.

**(e) Additional Insurance and Bonds.** To the extent such insurance is available at a reasonable premium cost, the Association may also purchase with Common Funds such additional

insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section 9.1(e), demolition insurance, earthquake insurance, directors' and officers' omission insurance, flood insurance, and workers' compensation insurance. The amounts of said coverage will be determined by the Board. The Association will be the owner and beneficiary of any such insurance obtained.

If obtained, Directors' and officers' errors and omissions insurance will insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or any officer, while acting in its capacity as such.

**Section 9.2. Owners Right to Copies of Policies and Notice of Significant Changes in Coverage.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) will be retained by the Association and will be available for inspection by Association Members at any reasonable time.

Pursuant to Civil Code Section 1365(e)(2) or comparable superseding statute, the Association will notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

**Section 9.3. First Mortgagees' Minimum Coverage Requirements and Right to Obtain Copies of Policies.** A First Mortgagee for any Lot in the Properties has the right to supply the Association with its minimum insurance requirements. The Association's insurance policies must meet at least the minimum requirements of those First Mortgagees who have provided notice of the minimum requirements to the Association.

All First Mortgagees for any Lot in the Project has the right, upon written request, to obtain copies of current insurance polies and/or satisfactory evidence of the Association's payment of premiums.

Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association must continuously maintain in effect such fire, casualty, and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) have notified the Association in writing that it is a Mortgagee, Owner of a Lot, an insurer of any Mortgage, or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such insurance requirements may include, but not by way of limitation, a "Special Lot Endorsement" or an "Inflation Guard Endorsement."

**Section 9.4. Coverage Not Available.** In the event any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association must obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board must notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 9.5. Individual Fire and Casualty Insurance Limited.** Except as provided in this section, no Owner can separately insure their Lot or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 9.1(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. The Association will levy a Special Individual Assessment against such Owner and its Lot in the amount of such diminution.

An Owner can insure their Unit against loss. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any First Mortgagee of said Lot.

**Section 9.6. Insurance Trustee.** All insurance proceeds payable under Section 9.1 and subject to the rights of the Mortgagees under Article XI, will be paid to an insurance trustee to be held and, in the discretion of the Board of Directors, expended for the benefit of the Owners, Mortgagees and others, as their respective interests will appear. Said insurance trustee must be a commercial bank or other institution with trust powers within Sacramento County that agrees in writing to accept such trust. If repair or reconstruction is authorized pursuant to Article X, below, the Association and any duly appointed insurance trustee will have the duty to contract for such work as provided in Section 10.5.

**Section 9.7. 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 Section 9.1. 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 9.8. Distribution to Mortgagees.** Subject to the provisions of Article XI, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

**Section 9.9. Owner's Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to their Lot that they desire. However, any such policy must include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

#### **Section 9.10. Deductibles.**

**(a)** Except with respect to insurance for earthquake damage, the Owners, or Owner's family members, contract purchasers, tenants, guests, or invitees, responsible for causing an insurable loss, will be obligated to contribute their proportional share of the insurance deductible, if any, corresponding to the insurance covering the loss. The proportional share of each Owner responsible for causing the insurable loss under this section 9.10(a) will be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of the total of Owners responsible for causing the insurable loss.

If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under this section 9.10(a), any Owner fails or refuses to pay their proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

If any Owner disputes the amount of their proportionate liability under this Section 9.10(a), such Owner may contest the amount of their liability by submitting to the Board, within ten (10) days after notice to the Owner of their share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board will give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners.

If such adjustments are recommended, the notice will schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments will be affirmed or modified by 51 percent of a majority of a quorum of the Members. If no adjustments are recommended by the Board, the decision of the Board will be final and binding on all Owners, including any Owner filing objections.

(b) With respect to a loss covered by earthquake insurance, the Owners of each Unit that has been totally or partially destroyed will be obligated to contribute their proportionate share of the insurance deductible. The Owners' proportionate share of the deductible will be based upon the ratio that the square footage of the living area of their Unit that has been destroyed bears to the total square footage of the living area of all Units that have been destroyed.

If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under this Section 9.10(b), any Owner fails or refuses to pay their proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

If any Owner disputes the amount of their proportionate liability under this Section 9.10(b), such Owner may contest the amount of their liability by submitting to the Board, within ten (10) days after notice to the Owner of their share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material. The Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. The Board's decision will be final and binding.

## **ARTICLE X: DAMAGE OR DESTRUCTION AND EMINENT DOMAIN OF COMMON AREA.**

**Section 10.1. Reconstruction Fund.** Upon the damage or destruction of any part of the Common Area, the Board will create and maintain a separate Reconstruction Fund in the event such

Common Area is damaged or destroyed. Each Reconstruction Fund will comprise any: (i) insurance proceeds, and any amounts recovered as a direct settlement from a third party; (ii) accumulated reserves for repair or replacement of the damaged Improvements; (iii) special or remedial assessments levied for the damage or destruction; and (iv) damages recovered from an action brought by the Association pursuant to Section 10.3. The funds in each Reconstruction Fund do not need to be segregated in a separate bank account. The amount in the Reconstruction Fund will be disbursed in accordance with the provisions in Section 10.4.

**Section 10.2. Damage or Destruction to Common Area.** If there is damage or destruction to any of the Common Area, then:

**(a) Cost Does Not Exceed Assessments.** If the cost of replacing or rebuilding does not exceed the amount in the Reconstruction Fund by more than the amount the Board could assess without the Owners' vote under Section 5.3(b), and the Board votes to repair and rebuild, then the Association will contract to repair or rebuild the damaged areas according to the original plans and specifications, and will levy an assessment on all Owners, in the amount, if any, by which the cost of repair or rebuilding exceeds the amount in the Reconstruction Fund.

**(b) Cost Exceeds Assessments.** If the cost of replacing or rebuilding exceeds the amount in the Reconstruction Fund by more than the amount the Association could assess without the affected Owner's vote under the section entitled "Assessments" or if the Board does not wish to repair and rebuild, the question of repairing and rebuilding will be decided by a vote of the Owners, and a disapproval by the Owners of the necessary assessment to replace or rebuild the damaged or destroyed Improvements will be the Owners' decision not to replace or rebuild in which case the Association will clear the property and place it in a neat and attractive condition.

**Section 10.3. Recovery of Damages for Damage or Destruction to Common Area.** The Association may commence and maintain action for the recovery of any damages caused to the Project if any part of the Common Area and related facilities is damaged or destroyed. This provision will survive the termination of this Declaration, and any recovery minus costs advanced by the Association will be paid into the Reconstruction Fund, designated, and paid out as provided for under this Article.

**Section 10.4. Disbursement of Reconstruction Fund.** Each Reconstruction Fund will be disbursed to pay for any costs of replacing, rebuilding or removing and placing Common Area in a neat and attractive condition as provided in Section 10.3. Any unused amount in each Reconstruction Fund will be first credited to make up any deficiency in the appropriate Maintenance Reserve Fund and then to the Operating Fund.

#### **Section 10.5. Eminent Domain.**

**(a) Action by Association.** If there is a taking of all or a portion of the Common Area and related facilities, the Association will negotiate or settle with the condemning authority for the acquisition of all or part of such Common Area. Any condemnation award or settlement will be paid into the Operating Fund.

**(b) Repair of Common Area.** If there is a taking of a portion of the Common Area and related facilities, the Association has the authority to apply any or all of the condemnation award to the repair or rebuilding of that portion of such Common Area damaged from the severance so that the remaining Common Area is kept in a neat and attractive condition.

**(c) Taking Defined.** A "taking," for the purpose of this section, is a taking of the Common Area under the power of eminent domain or as a conveyance of the Common Area by the Association in settlement of a proposed taking by eminent domain.

**(d) Action Affecting Lots.** If there is a taking of all or a portion of the Lots, the Owners and their Mortgagees, as their respective interests appear, are entitled to the proceeds of any award or settlement relating the affected Lots.

If any Lot is rendered irreparably uninhabitable as result of the taking, the Lots are deemed deleted from the Project and the Owners and Mortgagees of the affected Lots, upon receipt of the award or settlement and any portion of the reserve fund of the Association reserved for the Lot, will be released from the applicability of the Project Documents and deemed divested of any interest in the Common Area.

## **ARTICLE XI: PROTECTION OF MORTGAGEES.**

**Section 11.1. Mortgages Permitted.** Any Owner may encumber their Lot with Mortgages.

**Section 11.2. Priority of Mortgages.** Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof. Any lien which the Association may have on any Lot in the Project for the payment of Common Expense assessments attributable to such Lot will be subordinate to the lien or equivalent security interest of any First Mortgage on the Lot recorded prior to the date of recordation of a notice of delinquent assessment.

**Section 11.3. Payment of Taxes or Premiums by Mortgagees.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

**Section 11.4. Effect of Breach.** No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure

sale, trustee's sale, or otherwise.

**Section 11.5. First Mortgagee's Rights.** A First Mortgagee's rights shall include, but not be limited to, the following:

(a) **Attend Meetings.** Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(b) **Furnish Information.** Any First Mortgagee may furnish information to the Board concerning the status of any Mortgage.

(c) **Inspect Books and Records Furnish Information.** The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the Project contains fifty (50) or more Lots, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the Project contains fewer than fifty (50) Lots and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

**Section 11.6. No Restriction on Owner's Right to Ingress and Egress.** There shall be no restriction upon any Owner's right to ingress and egress to their Lot, which right shall be perpetual and appurtenant to their Lot ownership.

**Section 11.7. Notices to Mortgagees.** Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

a. Any proposed amendment to the Project Documents effecting a change in:

(i) The boundaries of any Lot or the exclusive use rights appurtenant thereto, if any;

(ii) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Lot or the liability for Common Expenses appurtenant thereto;

(iii) The number of votes in the Association appurtenant to any Lot; or

(iv) The purposes to which any Lot or the Common Area are restricted.

- b.** Any proposed termination of the legal status of the Project as a planned development.
- c.** Any condemnation or casualty loss which affects either a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such requesting party.
- d.** Any sixty (60) day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.
- e.** Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within sixty (60) days.
- f.** Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- g.** Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in Section 11.8.

#### **Section 11.8. FNMA, FHLMC, FHA, VA Mortgages.**

**(a) Conditions When this Section Applicable.** The provisions of this Section 11.8 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Lots:

- (i)** Any First Mortgage is sold or transferred to FNMA;
- (ii)** Any First Mortgage is sold or transferred to FHLMC; or
- (iii)** Any First Mortgage is FHA insured or a Veterans Affairs (“VA”) mortgage.

**(b) Approval of Material Amendments.** The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

- (i)** Voting rights;
- (ii)** Assessments, assessment liens, or subordination of assessment liens;
- (iii)** Reserves for maintenance, repair and replacement of Common Areas or any other portions of the Project which the Association has a duty to maintain,

repair and replace.

- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the general or exclusive use Common Areas, if any, or rights to their use;
- (vi) Boundaries of any Lot;
- (vii) Convertibility of Lots into Common Areas or vice-versa;
- (viii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Lots;
- (xi) Imposition of any right of first refusal or similar restriction on an Owner's right to sell, transfer or convey their Lot;
- (xii) A decision by the Association to establish self management when professional management has been required previously by a First Mortgagee;
- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted.

**(c) Termination of Legal Status.** Except as provided above, any election to terminate the legal status of the Project as a planned development must be approved by at least sixty-seven percent (67%) of the voting power of the Association and sixty-seven percent (67%) of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

**(d) Reallocation of Interests in the Common Area.** No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without the approval of fifty-one percent (51%) of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

**(e) Restriction on Certain Changes.** Unless at least sixty-six and 2/3 percent (66-2/3%) of the First Mortgagees (based on one vote for each First Mortgage owned) or sixty-six and 2/3 percent (66-2/3%) of the Owners have given their prior written approval, the Association shall not:

**(i)** By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or

**(ii)** Change the method of determining the Assessments, or other charges which may be levied against an Owner; or

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

**(iv)** Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Project which the Association has a duty to insure on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

**(v)** Use hazard insurance proceeds for losses to any Common Area or other Project improvements for other than the repair, replacement or reconstruction of such Common Area or improvements.

**(f) No Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey their Lot shall not be subject to any "right of first refusal" or similar restriction.

**(g) Foreclosure Eliminates Unpaid Assessments.** Each holder of a First Mortgage lien on a Lot who comes into possession of the Lot by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Lots, including the mortgaged Lot.

**(h) Mortgage Priority in Case of Distribution.** No provision in any Project Document will entitle an Owner or other party to priority over any rights of the First Mortgagee on the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or

condemnation awards for losses to or a taking of the Lot and/or Common Area.

**(i) Leasing Restrictions.** No Owner shall be permitted to lease their Lot for transient or hotel purposes. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents. No Lot may be leased or rented for less than thirty (30) days.

**(j) Taxes Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the First Mortgage under local law shall relate only to the individual Lots and not to the Project as a whole.

**Section 11.9. FHA/VA Approval.** During any period of time that a mortgage on any portion of the Project is held, insured or guaranteed by FHA or VA, and as long as there is a Class B Membership, the following actions shall require the prior approval of FHA or VA: amendment of the Project Documents, annexation of additional Property, dedication or mortgaging of the Common Area, merger or consolidation of the Association with another corporation.

**Section 11.10. Additional FHA Provisions.** All Owners, tenants and occupants of Lots in the development covenant and agree that the administration of the development shall be in accordance with the terms and provisions of the Regulatory Agreement (FHA Form No. 3278) executed by FHA and the Association and that such terms and provisions of said Regulatory Agreement shall be fully complied with.

To the extent any matters in this Declaration or in the Articles or the Bylaws are in any way inconsistent with any matters in said Regulatory Agreement, then any such inconsistent matters in said Regulatory Agreement shall prevail. The right to lease Lots in the development shall be subject to all terms and provisions of said Regulatory Agreement.

In the event of any conflict between any of the provisions of this section and any other provisions of this Declaration, the provisions of this section shall control.

Any provision of this Declaration which confers a power or right upon the FHA or the Federal Housing Commissioner and all of the provisions of the Regulatory Agreement shall be inapplicable whenever there are no Lots where FHA insures the mortgage held by any First Mortgagor.

Whenever a notice is required to be sent to a Mortgagor holding an FHA insured mortgage or the approval of FHA is required, the notice or the request for approval shall be sent to the supervisor of the FHA office in which the Project is located. If FHA does not respond within twenty (20) days after the notice is mailed or delivered, then FHA shall be deemed to have approved the request.

**Section 11.11. Compliance with FHA/VA, FHLMC or FNMA Requirements.** Declarant intends that the Project shall comply with all of the requirements of the Federal Housing Administration ("FHA"), the Veterans Affairs ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability

insurance covering any portion of the Project encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. All Lot Owners also agree that in the event the Project or the Project Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by any First Mortgagee to conform such Project Documents, or the Project, to the FHA/VA, FHLMC or FNMA requirements, subject to the review and approval of the California Department of Real Estate, in accordance with applicable law, so long as the Department of Real Estate retains jurisdiction.

**Section 11.12. Waivers.** A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided such waiver is in writing.

**Section 11.13. Conflicts.** In the event of a conflict between any of the provisions of this Article 11 and any other provisions of this Declaration, the provisions of this Article 11 shall control.

## **ARTICLE XII: NONSEVERABILITY OF COMPONENT INTERESTS.**

**Section 12.1. Severance Prohibited.** An Owner may not sever their Lot from their Membership in the Association. Nor may an Owner sever their Lot or their Membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Lot can be severally sold, conveyed, encumbered, hypothecated, assigned, leased, rented, occupied, used or otherwise dealt with. Any violation or attempted violation of this provision will be void. Similarly, no Owner can sever any exclusive easement appurtenant to their Lot over the Common Area from the Owner's Lot. Any attempt to do so will be void.

**Section 12.2. Limitation on Interests Conveyed.** After the initial sales of the Lots, unless otherwise expressly stated, any conveyance of a Lot or any portion of it by an Owner will be presumed to convey the entire Lot. However, nothing contained in this Section 12.2 will preclude the Owner of any Lot estate from creating an estate for life or an estate for years or from creating a cotenancy or joint tenancy in the ownership of the Lot with any other person or persons.

### **Section 12.3. Lot Splitting, Consolidation.**

**(a) Partition of Lot.** No Lot or real property interest may be subdivided without the prior written approval of the Board and the First Mortgagee of such Lot.

**(b) Consolidation of Lots.** No two (2) or more Lots may be consolidated into one Lot without the prior written approval of the Board and the First Mortgagees of each such Lots.

**(c) Change in Voting or Assessments.** The Association may require a change in the voting rights and assessment obligations after any Lot or consolidation, to keep the assessment and voting rights the same after the Project or consolidation as they were before such change.

**(d) Costs.** All Owners seeking permission to consolidate or subdivide a Lot will be

responsible for engineering, legal, and other costs of the consolidation or Project including the costs of changing the voting and assessment rights and obligations as provided in Subsection (c) of this section and must pay such costs upon demand. The Association may require pre-payment of the estimated costs of the Association as a condition of approval.

## **ARTICLE XIII: BREACH & DEFAULT:**

**Section 13.1. Remedy at Law Inadequate.** The provisions of the Declaration, the Bylaws, the Association Rules and/or Resolutions of the Board, as the same may be adopted or amended from time to time, constitute enforceable servitudes which will inure to and bind each Owner, Owner's family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, Member of Owner's family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to strictly comply with any provision of the Governing Documents will be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Association's Governing Documents is inadequate.

**Section 13.2. Nuisance.** Without limiting the generality of Section 13.1, the result of every act or omission whereby any covenant contained in this Declaration or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its Officers, the Board of Directors and/or any Owner.

Further, every remedy against nuisance, either public or private, will be applicable against every such act or omission; provided, however, the Board will not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

**Section 13.3. Violation of Law.** Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.



**Section 13.4. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law will be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies will not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

**Section 13.5. Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and/or the Association's Governing Documents will not constitute a waiver of the right to enforce the same thereafter, nor will such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

### **Section 13.6. Rights and Remedies.**

**(a) Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's family, guests, contract purchasers, employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions 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 hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action; or the suspension of the Owner's voting rights as a Member of the Association. The Association's right to undertake disciplinary action against its Members will be subject to the conditions set forth in this Section 13.6. The initiation of legal action will be subject to Section 13.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance will be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner will have such rights of enforcement as may exist by virtue of California Civil Code Section 1354 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing pursuant to Subsections 13.6(e) and (f), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member will be deemed to be a Member not in good standing until such time as the Board determines in writing that the violation which resulted in the Board's determination that the Member was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member will again be deemed to be a Member of the Association in good standing.

**(b) Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is

appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and will be enforceable as a Special Individual Assessment pursuant to Section 5.4.

**(c) Definition of "Violation".** A violation of the Governing Documents will be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days will justify cumulative imposition of disciplinary measures.

The Association will take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

**(d) Limitations of Disciplinary Rights.**

**(i) Loss of Rights: Forfeitures.** The Association will have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of their Lot due to the failure by the Owner (or Owner's family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of (a) the judgment of a court of competent jurisdiction, (b) a decision arising out of arbitration, (c) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or (d) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 13.6(e) and (f).

**(ii) Liens Against Member's Lot.** Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, a monetary penalty imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and Common Facilities for which the Member and/or the Member's family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Lot enforceable by the sale of the Lot under Civil Code Sections 2924, 2924b, and 2924c.

**(e) Hearings.** No penalty or temporary suspension of rights will be imposed pursuant to this Article XIII unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 13.6(g).

Notwithstanding the foregoing, under circumstances involving conduct that constitutes  
(i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of

neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) 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 late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or upon its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing will accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor must be delivered to the Association at a date as provided in Association Rules adopted by the Board pursuant to Section 13.6(g). The hearing will be held as provided by Association Rules adopted by the Board pursuant to Section 13.6(g).

**(f) Notices.** Any notice required by this article must, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice must be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it must be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

**(g) Rules Regarding Disciplinary Proceedings.** The Board may adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, will become a part of the Association Rules and will provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code Section 1354 or comparable superseding statute.

**(h) Recording Notices of Violations.** To the extent permitted by law, the Association may execute and record in the office of the County Recorder notice of any Owner's breach of, violation of, or failure to comply with, any provision of the Governing Documents or of any duly enacted Association Rule, within a reasonable time after the occurrence of such breach, violation or failure. The Association will deliver by first class mail to the Owner responsible for such breach a copy of the notice that it executes and records.

**Section 13.7. Court Actions; Mediation.** As long as Civil Code Section 1354 (or comparable superseding statute requiring alternative dispute resolution) is in force, this Section 13.7 will control the initiation of a legal action by the Association and/or its Members. This Section 13.7 will automatically be repealed from this Declaration should Civil Code Section 1354 (or comparable superseding statute) be repealed by the California Legislature.

**(a)** Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the governing documents (including either of those actions coupled with a claim for monetary damages not in excess of five thousand dollars (\$5,000.00)), the

Association and/or Members must first comply with the provisions of Civil Code Section 1354, or comparable superseding statute, relating to alternative dispute resolution.

Disputes related to Association Assessments are expressly exempted from the provisions of this Section 13.7 unless the Member strictly complies with the requirements of Civil Code Section 1366.3, or comparable superseding statute.

The mediation procedures described in Subsection 13.7(b) are intended to satisfy Civil Code Section 1354's alternative dispute resolution requirements. All notices issued and procedures followed in the mediation process will comply with the specific requirements imposed by Civil Code Section 1354, or comparable superseding statute.

**(b)** Before instituting any judicial action, arbitration, or other proceeding arising out of a dispute between the Association and any Member or between two (2) or more Members of the Association which concerns any rights or obligations arising under or pursuant to the Governing Documents, the Association or Member who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute pursuant to this Section 13.7.

The Complaining Party must send the other party (the "Responding Party") written notice of the nature of the dispute, the facts giving rise to its claim and its desire to mediate (the "Mediation Notice"). Should either party commence a judicial action, arbitration, or other proceeding without sending a Mediation Notice, the Responding Party may stay the action and request a Mediation Notice from the Complaining Party. The Mediation Notice must name a mediator. Both the Complaining Party and the Responding Party each will be obligated to pay one-half (1/2) of the costs of mediation. Each party is to pay their own attorneys' fees, if any, with respect to the mediation.

If the Responding Party objects in writing to the Complaining Party's choice of a mediator, the parties must ask that a professional mediation service pick a mediator from its panel within ten (10) days from the date of the objection. Within thirty (30) days after the mediator is chosen, the parties must schedule and attend a mediation and attempt in good faith to resolve their dispute. If the mediation does not resolve the dispute or if the Responding Party refuses to attend, the Complaining Party will be free to commence litigation.

The requirements of this Subsection (b) will not apply under circumstances where the Complaining Party is entitled to a temporary restraining order or preliminary injunction in order to avoid irreparable harm or injury.

**(c)** Unless mutually agreed to in writing by all parties to the dispute, evidence of anything said or of any admissions made in the course of the alternative dispute resolution process may not be admissible into evidence in any legal proceeding. Testimony referring to such statement or admission may not be admissible. Nor will disclosure of any such statement or admission be compelled in any civil action. Documents prepared for the purpose of, in the course of, or pursuant to, alternative dispute resolution procedure may not be admissible into evidence and disclosure of such documents may not be compelled in any legal proceeding.

**Section 13.8. Joint and Several Liability of Co-Owners.** If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration will be joint and several.

**Section 13.9. Costs and Attorneys' Fees.** In the event the Association takes any action because of any alleged breach or default of any Owner or other party hereto under this Declaration or the Association's Governing Documents, whether or not legal or judicial proceedings are initiated, the Association may recover the full amount of all costs, including attorneys' fees that the Association has incurred because of the alleged breach or default of the Owner or other party. The Association's remedies to recover the amount of such costs and attorneys' fees will include but are not limited to the imposition of a Special Individual Assessment pursuant to Article V.

## **ARTICLE XIV: NOTICES.**

**Section 14.1. Mailing Addresses.** Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents must be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

**(a) Owners.** To the street address of the Owner's Lot or to such other address as the Owner may from time to time designate in writing to the Association.

**(b) The Association.** Camino Village Homeowners Association at 2446 Fallwater Lane, Carmichael, California 95608 (or to such other address as the Association may from time to time designate in writing to the Owners).

**(c) Directors/Officers.** To the street address as the Director and/or Officer may from time to time designate in writing to the Association.

**(d) Eligible First Mortgagees.** To the street address as the Eligible First Mortgagees may from time to time designate in writing to the Association and which the Association may maintain in a book entitled "Mortgagees of Lots."

The foregoing addresses may be changed by written notice given as herein provided. Unless so changed, the last address provided for each party, whether herein or pursuant to notice hereunder, will be deemed to be the address of such party for any and all purposes.

**Section 14.2. Personal Service Upon Co-Owners and Others.** Personal service of a notice or demand to one of the Co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, will be deemed delivered to all such Co-Owners, to such partnership, or to such corporation, as the case may be.

**Section 14.3. Deemed Delivered.** All notices and demands served by mail must be by first-class or certified mail, with postage prepaid, and will be deemed delivered seventy-two (72)

hours after deposit in the United States Mail. All notices and demands served by personal delivery are deemed delivered upon service.

## **ARTICLE XV: NO PUBLIC RIGHTS IN THE PROJECT.**

**Section 15.1. Dedication of Project.** Nothing contained in this Declaration will be deemed to be a gift or a dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

## **ARTICLE XVI: AMENDMENT OF DECLARATION.**

**Section 16.1. Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of Members representing at least fifty-one percent (51%) of all eligible Members, pursuant to the Bylaws. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration will be at least the percentage of affirmative votes prescribed in said clause or provision.

**Section 16.2. Effective Date of Amendments.** Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Sacramento County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 16.1, above, have been duly met.

**Section 16.3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration will be presumed valid by anyone relying on them in good faith.

## **ARTICLE XVII: ANNEXATION.**

**Section 17.1. Annexation.** Any real property which consists of a parcel or parcels shown on a final Project or parcel map of Record may be annexed to the Project in accordance with this article, and will thereupon become subject to this Declaration with the consent of the Owner of the property.

The Association may annex real property to the Project provided that such annexation is approved by a vote or written consent of a majority of the Owners.

**Section 17.2. Method of Annexation.** Any annexation undertaken in accordance with this section will be effective when a Declaration of Annexation executed by the annexing party and the owner of the interest to be annexed covering the property to be annexed, and includes the following information.

(a) A description of the property to be annexed, together with a description of the Common Area.

**(b)** A description of any parcel of the property to be annexed which is Common Area, and of any property to be annexed which is designated for maintenance in accordance with Section 6.1.

**Section 17.3. Effect of Declaration of Annexation.** Upon any annexation becoming effective, the Declaration of Annexation will become a part of this Declaration, and will be deemed amended by any amendment to this Declaration.

**Section 17.4. Assessments and Voting Rights in Subsequent Phases.** Except as modified by a Declaration of Annexation, assessments and voting rights applicable to Lots in subsequent Phases will be as set forth in the applicable provisions of this Declaration.

**Section 17.5. Adjustment for Capitol Improvements.** Where annexation of a Phase occurs after existing Lots within the Project have been assessed for capital improvements to Common Area, the Association may adjust the assessment on the annexed Lots so that the annexed Lots pay their proportionate share of the Improvement minus reasonable depreciation of the Improvement if it has been in use for one year or more at the time of annexation.

## **ARTICLE XVIII: GENERAL PROVISIONS.**

**Section 18.1. Effective Date.** This Declaration will become effective upon its recordation in the Official Records of Sacramento County, California.

**Section 18.2. Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration will run with, and will benefit and burden the Lots and the Common Area as herein provided, and will inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration, after which time the same will be automatically extended for successive terms of ten (10) years each unless, within six (6) months prior to the expiration of any term (initial or successive), a recordable written instrument, approved by a majority of all Owners terminating the effectiveness of this Declaration must be filed for recording in the Office of the County Recorder of Sacramento County, California.

### **Section 18.3. Construction of Declaration.**

**(a) Restrictions Construed Together.** All of the covenants, conditions, and restrictions of this Declaration will be liberally construed together to promote and effectuate the fundamental concepts of the development of the Project as set forth in the Recitals of this Declaration.

Failure to enforce any provision hereof will not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

**(b) Restrictions Severable.** Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision which will remain in full force and effect.

**(c) Singular Includes Plural/Gender.** The singular will include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter will each include the masculine, feminine and neuter, as the context requires.

**(d) Captions.** All captions, titles or headings used in this Declaration are intended solely for convenience of reference and will not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

**(e) Conflicts.** In the event of any conflict between any of the provisions of this Article XVIII and any other provisions of this Declaration, the provisions of this Article XVIII will control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration will control.

Further, neither the Articles nor the Bylaws will be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration will control.

**(f) Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

**Section 18.4. Power of Attorney.** To the extent necessary to carry out and enforce the provisions of this Declaration and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

## Certification

We, the undersigned hereby certify, under penalty of perjury, that the Restated Declaration of Covenants, Conditions, and Restrictions set forth herein was duly adopted with the vote or written consent of at least fifty-one (51%) of the Owners.

CAMINO VILLAGE HOMEOWNERS ASSOCIATION

**President:**

*(Sign Name)*

*(Print Name)*

Dated: \_\_\_\_\_

**Secretary:**

*(Sign Name)*

*(Print Name)*

Dated: \_\_\_\_\_