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TO
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRETTON WOODS**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRETTON WOODS**

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRETTON WOODS**

This Declaration of Covenants, Conditions and Restrictions for Bretton Woods (the "Declaration") is made by Bretton Woods, LLC, a California limited liability company ("Declarant").

RECITALS

A. Declarant is the owner or has the consent of the owner of certain real property located in the City of Davis, Yolo County, California, which is more particularly described in attached Exhibit "A" ("Phase 1").

B. This Declaration shall initially apply only to Phase 1, as the initial Phase of a multi-phased planned development known as Bretton Woods. All or portions of the real property more particularly described in attached Exhibit "B" (the "Subsequent Phase Property") may be made subject to this Declaration by annexation in accordance with the terms of Article 14 of this Declaration. As property is annexed, the annexed property shall become part of the "Development", as defined herein. Phase 1 and the Subsequent Phase Property are hereafter referred to as the "Overall Development".

C. Declarant hereby declares that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "planned development" as that term is defined in California Civil Code Section 4175; (ii) are for the benefit and protection of the Development and for the protection and enhancement of the desirability, value and attractiveness of all Lots and Common Area located therein; (iii) run with the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

D. Notwithstanding the anticipated development of the Overall Development in accordance with the plan of phased development contemplated by this Declaration, nothing in this Declaration shall be construed or interpreted to commit Declarant to the development of any portion of the Subsequent Phase Property in accordance with any present planning, or to the annexation of all or any part of the Subsequent Phase Property to this Declaration, whether or not it is so developed.

E. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be

binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

F. The Development consists of approximately three hundred and eighty-one units (381), consisting of single family detached, duets, and condominium residences, Association Maintenance Area and Common Area parcels. The Owners of each Lot is a Member of the Bretton Woods Homeowners Association and the Association will own and maintain the Common Area within the Development for the benefit of the Owners and Residents. The Common Area may consist of recreation areas, additional common area and Association Maintenance Area as they may be identified in supplemental declarations, greenways, parks, pedestrian paths, walkways and landscaping.

ARTICLE 1 DEFINITIONS

1.1 Definitions, Generally. When the words and phrases described in this Article are used in the Declaration, they will have the meanings set forth in this Article. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires. The use of the term “may” in this Declaration indicates discretion or choice, and the use of the term “shall” in this Declaration means imperative, mandatory or imposing an absolute duty. Except as otherwise provided herein, all capitalized terms used in this Declaration shall have the same meanings as set forth in this Article 1.

1.2 Absolute Majority. “Absolute Majority” shall mean a majority of the Total Voting Power of the Association. The term “Absolute Majority” as used in the Governing Documents shall have the same meaning and shall apply to any situations subject to California Civil Code Section 4065.

1.3 Accessory Dwelling Units; ADU. “Accessory Dwelling Units”, or “ADU” as defined in 65852.2 and 65852.22 of the California Government Code, respectively, shall mean an attached or a detached Residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a Lot with a proposed or existing primary Residence.

1.4 Additional Charges. “Additional Charges” shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys’ fees, Recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.5 Agricultural Buffer Transition Area. “Agricultural Buffer Transition Area” shall mean the agricultural buffer area that separates the agricultural land to the north and the west and the residential Lots that are adjacent to the buffer area.

1.6 Architectural Review Committee. “Architectural Review Committee” shall mean the committee created pursuant to Article 8 of this Declaration.

1.7 Architectural Rules. “Architectural Rules” shall mean the rules and regulations adopted by the Board pursuant to Section 8.5 of this Declaration.

1.8 Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

(a) Regular Assessments. Regular Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

(b) Enforcement Assessments. Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

(c) Reimbursement Assessments. Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

(d) Special Assessments. Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.9 Association. "Association" shall mean the Bretton Woods Community Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.10 Association Maintenance Area. "Association Maintenance Area" shall mean any portion of the development, and any real property maintained but not owned by the Association, in addition but not limited to, front yard landscaping and irrigation systems located on the Lots within the Development, as well as the landscaping on any unfenced portion of the rear of a Lot adjoining the private greenways, the street trees, landscape strips, and signage in the public right-of-way.

1.11 Board. "Board" shall mean the governing body of the Association.

1.12 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Members and any duly-adopted amendments thereof.

1.13 Care-giver Suites. "Care-giver Suites" shall mean the addition of living quarters generally located above the garage of the Residence for the live in care-giver.

1.14 City. "City" shall mean the City of Davis, located in Yolo County, California, and its various departments, divisions, employees and representatives.

1.15 Common Area. "Common Area" shall mean all real property owned or maintained by the Association for the common use and enjoyment of the Owners and Residents of the Development. Additional Common Area may be designated in Declarations of Annexation and Supplemental Declarations.

1.16 Condominium. "Condominium" shall mean an estate in real property, consisting of an undivided interest in common in a portion of real property coupled with a separate interest called a unit.

1.17 County. "County" shall mean Yolo County, California, and its various departments, divisions, employees and representatives.

1.18 Declarant. “Declarant” shall mean Bretton Woods, LLC, a California limited liability company. The term “Declarant” shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant’s successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant.

1.19 Declaration. “Declaration” shall mean this instrument, as it may be amended from time to time. If any Supplemental Declarations or Declarations of Annexation are approved and Recorded in accordance with Article 14, below, then following such Recordation any reference to this Declaration shall mean this Declaration as amended and supplemented by the Supplemental Declaration(s) and any Declarations of Annexation.

1.20 Declaration of Annexation. “Declaration of Annexation” shall mean a declaration annexing real property to the Development and subjecting the real property described therein to this Declaration, all as more particularly described in Article 14, below.

1.21 Development. “Development” shall mean: (i) Phase 1; and (ii) each Phase described in a Declaration of Annexation, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

1.22 Director. “Director” shall mean a member of the Board.

1.23 Governing Documents. “Governing Documents” shall mean the articles of incorporation, Bylaws, Declaration, Rules (including the Architectural Rules), and the policies and resolutions duly adopted by the Board.

1.24 Improvement. “Improvement” shall mean all structures and improvements including without limitation buildings, Accessory Dwelling Units, Junior Accessory Dwelling Units, landscaping, paving, fences, and signs.

1.25 Junior Accessory Dwelling Units; JADU. “Junior Accessory Dwelling Units”, or “JADU” as defined in 65852.2 and 65852.22 of the California Government Code, respectively, shall mean a unit that is no more than five hundred (500) square feet in size and contained entirely within a single-family Residence.

1.26 Lot. “Lot” shall mean any plot of land shown upon the Subdivision Map, with the exception of the Common Area lots.

1.27 Member. “Member” shall mean an Owner, and refers to membership in the Association.

1.28 Member in Good Standing. “Member in Good Standing” shall mean 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 may be more particularly set forth in the Bylaws.

1.29 Mortgage. “Mortgage” shall mean a deed of trust as well as a mortgage in the conventional sense. “First Mortgage” shall mean any Recorded Mortgage on a Lot with first priority

over other Mortgages on such Lot. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

1.30 Notice of Delinquent Assessment. "Notice of Delinquent Assessment" shall mean any lien "Lien" recorded against the property in accordance with California Civil Code Section 5675: (a) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code Section 5650(b), a legal description of the Owner's Lot against which the Assessment and other sums are levied, and the name of the Record Owner of the Lot against which the Lien is imposed.

1.31 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the Official Records of the office of the County Recorder, including the purchaser under an installment land contract, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to: (i) community property or other equitable rights not shown of Record; or (ii) rights of adverse possession not shown of Record. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.32 Permitted Health Care Resident. "Permitted Health Care Resident" shall mean a person hired to provide live-in, long-term, or terminal health care to a Qualifying Resident.

1.33 Phase. "Phase" shall mean each of the following: (i) Phase 1; and (ii) all the real property covered by a Declaration of Annexation in accordance with Article 14, below, unless "Phase" is otherwise defined in such Declaration of Annexation.

1.34 Phase 1. "Phase 1" shall mean all of the real property described in Exhibit "A".

1.35 Qualifying Resident. "Qualifying Resident" or "Senior Citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

1.36 Qualified Permanent Resident. "Qualified Permanent Resident" shall mean a person who meets either of the following requirements:

(a) Companion to Qualifying Resident. The person residing with the Qualifying Resident prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Qualifying Resident and the person was forty-five (45) years or older, or was a spouse, cohabitant (defined as persons who live together as husband and wife or as domestic partners within the meaning of California Family Code Section 297), or person providing primary physical or economic support to the Qualifying Resident; or

(b) Adult Dependent Child. The person is a permanently physically or mentally

impaired or terminally ill adult who is a dependent child of the Qualifying Resident or Qualified Permanent Resident as defined in Section 1.36(a), above, unless the Board determines that there are special circumstances to disallow a particular dependent child as a Qualified Permanent Resident. For the purposes of this section, “special circumstances” means a condition wherein such a dependent child is or may be harmful to himself or herself or others.

1.37 Range of Assessment. “Range of Assessments” shall mean the Association’s phased budget as adopted by the Board which sets forth an upper and lower range of assessments for various Phases in the Development and which allows for assessments to be adjusted within the range from time to time as each Phase is annexed to the Association.

1.38 Record; Recorded; Recordation; Filed. “Record”, “Recorded”, “Recordation”, and “Filed” shall mean, with respect to any document, the recordation or filing of such document in the Official Records of the County Recorder’s office.

1.39 Residence. “Residence” shall mean a residential structure, including but not limited to, Accessory Dwelling Unit located upon a Lot which is designed for human residential use and occupancy.

1.40 Resident. “Resident” shall mean any person who resides in a Residence on a Lot within the Development whether or not such person is an Owner.

1.41 Rules. “Rules” shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board from time to time, and the Architectural Rules as adopted and published by the Board from time to time.

1.42 Shared Facilities Agreement. “Shared Facilities Agreement” shall mean that certain agreement Recorded in the Official Records of Yolo County by and between the Declarant and the Association.

1.43 Shared Improvement. “Shared Improvement” shall mean the entire roof, including, but not limited to, the cricket, shared downspouts, caulking, flashings, and roof composition shingles or tiles, and any component of a Duet Building or any other Improvement within a Lot containing a Duet Building that is constructed on the boundary line of two (2) Lots, with a portion of the component located on or serving each of the adjoining Lots.

1.44 Simple Majority. “Simple Majority” shall mean a majority of the votes of the Members: (i) represented and voting at a meeting at which a quorum is present; or (ii) cast by written ballot in which the number of ballots received equals or exceeds the number required to establish a quorum. The term “Simple Majority” as used in the Governing Documents shall have the same meaning and shall apply to any situations subject to California Civil Code Section 4070.

1.45 Subdivision Map. “Subdivision Map” shall mean the final subdivision map Filed with the County Recorder for any portion of the Development. Any reference to “Conditions of Approval” shall be to the Conditions of Approval for the Subdivision Map.

1.46 Supplemental Declaration. “Supplemental Declaration” shall mean any declaration (as defined in California Civil Code Section 4135), Recorded pursuant to Section 14.4, below, which supplements this Declaration and which may affect only a portion of the Development. A Supplemental Declaration may be entitled as an amendment to the Declaration in order to satisfy County Recording requirements.

1.47 Total Voting Power. “Total Voting Power” shall mean the total number of votes of all Members entitled to vote at a particular time, excluding any Lots as to which an Owner is not then a Member in Good Standing.

ARTICLE 2 HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association, through the Board, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

2.3 Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall vest upon the commencement by the Association of Regular Assessments against those Lots.

(b) Classes of Membership. The Association shall have the following two (2) classes of voting membership:

(i) Class A Members. Class A Members shall initially be all Owners except Declarant and shall have one (1) membership for each Lot owned.

(ii) Class B Members. Declarant shall be the only Class B Member.

(c) Membership Voting Rights. Only Members in Good Standing shall be entitled to vote. The voting rights and other privileges of each class of membership and the conversion of Declarant’s Class B membership into Class A memberships shall be as set forth in Article 3 of the Bylaws.

(d) Suspension of Voting Rights. A Member’s voting rights may be temporarily suspended under those circumstances described in subsection 10.5(c), below.

(e) Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.7, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than Declarant is intended to preclude Declarant from casting votes attributable to any Lots owned by Declarant. Instead, approval by the Association's Members requires the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the Total Voting Power of the Association as well as the approval of the prescribed majority of the Total Voting Power of the Association other than Declarant.

2.4 Board. The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

2.5 Association Rules. The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Lots, the keeping of pets on Lots, and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

2.6 Manager and Other Personnel. The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

2.7 Capital Improvements. The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of at least a majority of each class of Members. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 12 of this Declaration. For purposes of this Section "capital improvements" is defined as any: (i) substantial discretionary addition to the Common Area; (ii) voluntary significant upgrade to Common Area materials; or (iii) discretionary material alterations to the appearance of the Development.

2.8 Sale or Transfer of Association Property. The Board shall have the power to sell the Association's property provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the

Association for that fiscal year without approval of at least a majority of each class of Members.

2.9 Transfer or Dedication of Common Area to Public Agency or Utility. The Board shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility or other person or entity for such purposes and subject to such conditions as may be agreed to by the Board, and upon the approval of at least a majority of each class of Members.

2.10 Borrow Money. The Board shall have the power to borrow money in the name of the Association.

2.11 Mortgage of Association Property. The Board shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.

2.12 Mergers and Consolidations. The Association may: (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association; or (ii) annex additional property to the Development, in accordance with Section 14.2, below.

2.13 Dissolution. So long as there is any lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the prior written consent of the City and the consent of all Members must be obtained for the Association to: (i) transfer all or substantially all of its assets; or (ii) file a certificate of dissolution.

2.14 Limitation of Liability. Neither the Association or its Directors, officers, employees, agents or committee members (collectively and individually referred to as the “Released Party”) shall be personally liable for damages or in equity to any of the 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 pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as: (i) the establishment of the Association’s annual financial budget; (ii) the funding of Association reserve accounts; (iii) the discharge of the Association’s maintenance, repair and replacement obligations; (iv) the enforcement of the Governing Documents; and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

2.15 Right to Enter Into Shared Agreements. The Association has the right and power to enter into a Shared Facilities Agreement, cost sharing arrangement, joint use agreement, shared maintenance agreement, or other appropriate contract with Declarant, Community Builders, an Operator and any other person, with regard to the use and maintenance of any real property of the Association, or any neighboring real property or jointly used Improvement or the cost of providing services jointly to such parties.

ARTICLE 3 COMMON AREA

3.1 Purpose of Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Owners, the members of the Owners’ households, and the Owners’ tenants and guests as provided in the Governing Documents.

3.2 Conveyance of Common Area. Declarant shall convey fee simple title to the Common Area parcels within any Phase of the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of Record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot to a purchaser. The Association shall be deemed to have accepted the Common Area conveyed to it when: (i) a grant deed conveying title to the Common Area has been Recorded in the Official Records of the County; and (ii) assessments for the Phase in which the Common Area is located have commenced.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement for ingress, egress, use of, and enjoyment in, to, and throughout the Common Area and Association Maintenance Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) Adoption of Rules. The right of the Board to establish and enforce reasonable Rules governing the use of the Common Area and the facilities thereon including, without limitation, Rules: (i) limiting the number of guests of Members permitted to use the Common Area and the facilities thereon at any one time; (ii) limiting the hours of use of the Common Area and the facilities thereon; (iii) regulating the use of the Common Area and the facilities thereon for group activities, and (iv) regulating use of the Common Area drives, provided that no Owners shall be denied ingress and egress over Common Area drives to such Owner's Lot;

(b) Facilities Fees. The right of the Board to charge reasonable admission and other use fees for the temporary exclusive right to use a specified portion of the Common Area for a special event;

(c) Suspension of Use. The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the recreational facilities located on the Common Area for: (i) any period during which any Assessment against such Owner's Lot remains unpaid; and/or (ii) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible, provided that no Owners shall be denied ingress and egress over Common Area roadways to such Owner's Lot;

(d) Granting of Easements. The right of the Board to grant easements and rights of way in, on, over, or under the Common Area and Association Maintenance Area;

(e) Transfer to Public Agency. The right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility;

(f) Encumber. The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;

(g) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations

with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area and Association Maintenance Areas;

(h) Establish Signage. The right of the Association to establish, construct, maintain, repair and replace entrance signs, privacy gates, street signs, lights, maps, directories and other similar improvements upon the Common Area and Association Maintenance Areas;

(i) Association Use Areas. The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area and Association Maintenance Areas including without limitation storage facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents;

(j) Development, Sales and Inspections. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Area for development and sales activities in accordance with Article 15, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein. Declarant shall also have the right to inspect the Development in accordance with Article 15, below.

3.4 Assignment of Rights of Use. Upon occupancy of a Lot by a tenant, the Owner shall be deemed to have assigned all Common Area and Association Maintenance Area rights exclusively to the tenants of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge the Owner's obligations and rights as a landlord. Any Common Area and Association Maintenance Area rights of enjoyment assigned pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this Section to limit the right of use and enjoyment of the Common Area and Association Maintenance Area to Residents and their guests.

3.5 Common Area Construction. Following the conveyance of a Common Area lot or parcel to the Association, no person or entity other than the Association or its duly-authorized agents: (i) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area; (ii) shall make or create any excavation or fill upon the Common Area; (iii) shall change the natural or existing drainage of the Common Area; or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board determines that the lien does

adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

3.7 Enforcement of Bonded Obligations.

(a) Board Consideration of Enforcement. If any of the Common Area Improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of Declarant to complete such Common Area Improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any Improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

(b) Member's Rights to Call Meeting Regarding Enforcement of Bonds. If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the Total Voting Power of the Association other than Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 4 USE RESTRICTIONS

4.1 Offensive Conduct, Nuisances, Noise. No noxious, harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and Association Maintenance Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including without limitation the barking of dogs or excessively loud music, to emanate from the Resident's Lot, vehicles, or the vehicles of guests and invitees, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area and Association Maintenance Area. Nothing in this Section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.2 Residential Use. Except as specifically provided in Sections 4.3, 4.19 and 4.20, below, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

(a) Professional and Administrative. Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development.

(b) Development and Sales of Residences. As more particularly provided in Article 15, below, Declarant shall be entitled to use Residences as models, sales or rental offices or construction headquarters for the purpose of constructing Residences and marketing of Residences within the Development or for development projects located outside of the Development.

(c) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development, including, but not limited to the businesses described in Sections 4.19 and 4.20, below.

4.4 Use of the Common Area. All use of the Common Area is subject to the Governing Documents. No alterations or additions to the Common Area shall be made except as authorized by the Board pursuant to the Governing Documents. Nothing shall be placed, kept, stored, or parked on the Common Area without the prior written consent of the Board, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Common Area. Each Owner shall avoid causing damage to the Common Area.

4.5 Use of Association Maintenance Area. All use of the Association Maintenance Area

is subject to the Governing Documents. No alterations or additions to the Association Maintenance Area shall be made except as authorized by the Board pursuant to the Governing Documents. Nothing shall be placed, kept, stored, or parked on the Association Maintenance Area without the prior written consent of the Board, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Association Maintenance Area. Each Owner shall avoid causing damage to the Association Maintenance Area.

4.6 Requirement of Architectural Approval. As addressed in greater detail in Article 8, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting and all other exterior Improvements are subject to approval of the Architectural Review Committee.

4.7 Sports Apparatus. Unless otherwise permitted by Rules adopted by the Board, no sports apparatus, whether portable or fixed, including without limitation basketball standards or skateboard ramps shall be permitted within the Development. As used in this Section, the term “sports apparatus” does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

4.8 Window Coverings. To the extent that the Owner wishes to install window coverings, drapes, window shades, or shutters shall be installed in the windows of the Residences and garages. All window coverings shall comply with any Rules adopted by the Board. In no event shall windows be painted, nor shall aluminum foil, newspaper, bed sheets, cardboard or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.9 Signs. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.10 Antennas. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals of any kind, are permitted within the Development, except as provided in this Section. Antennas or satellite dishes with a diameter or diagonal measurement not greater than one (1) meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively “Permitted Dishes”) may be erected, placed or installed on a Lot, subject to the following restrictions, provided that the application of these restrictions do not unreasonably delay installation or expense, or preclude reception of an acceptable quality signal:

(a) Preferred Placement List. All Permitted Dishes shall be installed at locations in accordance with a prioritized list of placement preferences, if such a list is adopted by the Board.

(b) Reasonable Rules. All Permitted Dishes shall be installed in accordance with such reasonable restrictions which may be imposed as part of the Architectural Rules.

(c) Post Installation Review. The Architectural Review Committee may review the location and installation of Permitted Dishes after installation. After its review, to the

extent permitted by law, the Architectural Review Committee may require a Permitted Dish be moved to a preferred location designated by the Committee.

4.11 Trash Disposal. Trash, garbage, accumulated waste plant material and all other waste and refuse shall be deposited only in covered sanitary containers or recycling containers in accordance with the following provisions:

(a) Screened Containers. No trash, garbage, composting, rubbish, or other waste material shall be allowed to accumulate on any Lot unless stored in an appropriate sanitary, covered disposal container that is located within an enclosed area adjacent to the Owner's Residence and screened from the view from the Common Area and Association Maintenance Area, the streets or any other Residences.

(b) Trash Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in subsection 4.11(a) after collection. All containers shall be placed away from parked vehicles and other obstructions. The Board shall adopt Rules regulating the placement of containers for trash collection, including specific limitations on the period of time during which containers may be placed for collection. Residents of Lots which are served by Common Area or Association Maintenance Area alleys shall be required to place solid waste containers along the side of the Common Area or Association Maintenance Area roadways which connect to the Common Area or Association Maintenance Area alley serving the Resident's Lot.

(c) Trash Storage. No Owner or Resident shall permit or cause any garbage, trash or other waste or refuse to be kept upon any portion of any Lot outside of the Residence or elsewhere in the Development, except in sanitary, covered disposal containers.

4.12 Vehicles and Parking.

(a) Limitations on Types of Vehicles.

(i) Recreational Vehicles. No trailer, motor home, recreational vehicle, camper, or boat shall be parked, kept or permitted to remain within the Development unless placed or maintained completely within an enclosed garage, and provided that the parking of such recreational vehicle or trailer does not displace the parking of otherwise permitted vehicles within the garage. The Board, in its complete discretion and upon such basis and terms as it deems prudent, shall have the power to adopt, modify and repeal Rules permitting the temporary use and parking within the Development of vehicles otherwise prohibited by the provisions of this subsection.

(ii) Commercial Vehicles. No truck, van or commercial vehicle shall be parked, kept or permitted within the Development unless placed or maintained completely within an enclosed garage, except for such limited times as are necessary for deliveries, the performance of maintenance, repair and replacement of Improvements within the Development and other similar situations, and then subject to any Rules adopted by the Board which may include, without limitation, a limit on the time of day or days of the week when such vehicles may be present within the

Development. The term “truck, van or commercial vehicles” shall not include sedans or standard size cars, pickup trucks and vans which are used for both business and personal uses, provided that any signs or markings of a commercial or governmental nature on such vehicles shall be unobtrusive as determined by the Board.

(b) Condition of Vehicles. No unreasonably noisy vehicles and no vehicles (including, without limitation, scooters, motorcycles or other motorized devices) emitting foul smelling or offensive exhaust fumes shall be operated within the Development. No dilapidated, unsightly, inoperable, or abandoned vehicle shall be parked, kept or permitted to remain upon any area within the Development unless completely enclosed within a garage. Each vehicle operated or located within the Development shall maintain, and the Board shall have the authority to require written evidence of, current registration which permits the vehicle to be legally operated on public streets.

(c) No Vehicle Repairs. No vehicle maintenance, or repairs of any kind may be made to vehicles within the Development except such emergency repairs as are necessary to remove the vehicle from the Development and except within an enclosed garage.

(d) Parking of Permitted Vehicles. Vehicles permitted by this Section 4.11 may be parked within the Development only as follows:

(i) Garage Parking. Owners and permanent Residents shall utilize their Residence’s garage as the primary parking space for the number of vehicles within the garage as the garage was originally designed to contain. Owners and permanent Residents shall not utilize any other parking space otherwise permitted by this Section 4.11, unless the garage is occupied by a parked vehicle or vehicles.

(ii) Driveway Parking. Provided a vehicle is parked within the Lot’s garage and provided the Lot has a driveway, only the Owner’s guests may park permitted vehicles wholly within the driveway located on such Owner’s Lot. Vehicles parked within a driveway shall not extend into the Common Area drives serving the Development.

(iii) Live in Care-Giver. To the extent that the garage is utilized by parking the number of cars for which the garage was originally designed to contain, the live in care-giver may park on the driveway located on such Owner’s Lot. If the garage is not fully utilized by parking the number of cars for which the garage was originally designed to contain, the live in care-giver shall park in the garage.

(iv) Common Area; Association Maintenance Area Parking. To the extent that there is Common Area or Association Maintenance Area that is improved for vehicle parking, the restrictions on such parking shall be as stated in any Supplemental Declaration.

(v) Parking Within the Public Roadways. The Association may adopt Rules limiting the parking of vehicles within the public roadways. Parking may be limited to one (1) side of the street only, except those sections of street specified in

the Conditions of Approval. Streets or segments of streets that do not provide provisions for parking shall have "No Parking" signs posted in accordance with the Vehicle Code. On street parking shall not encroach into the required minimum width required for emergency vehicle access.

(e) Parking Rules and Enforcement. In order to prevent or eliminate parking problems within the Development, or to further define and enforce the restrictions contained in this Section, the Board shall have the authority to adopt further reasonable rules and restrictions regarding vehicles and parking within the Development as the Board may deem prudent and appropriate. The Board shall also have the power to impose sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation:

(i) Towing of Vehicles. The power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle.

(ii) Parking Fines. The power and authority to fix and impose fines for violations of this Section in accordance with California Civil Code Section 5850(a).

4.13 Garages. To the extent that the garage is not being used as a Junior Accessory Unit, JADU, the following provisions shall apply to all garages:

(a) Garage Usage: Remodel. No garage shall be remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would interfere with the ability of the Owner of the Lot to accommodate the number of vehicles the garage was originally designed to contain.

(b) Garage Parking. Required parking spaces within garages shall remain clear for parking. Enforcement shall be the responsibility of the Association.

(c) Garage Conversion. Garage conversions (partial or whole) shall not be permitted unless the garage is converted in accordance with the requirements of a JADU. Prior to the garage conversion, the Owner shall submit plans and specifications to the Architectural Review Committee for review. Upon written approval by the Architectural Review Committee, the Owner may convert the garage into a JADU.

4.14 Compliance with Laws. Nothing shall be done or kept anywhere within the Development which violates any local, state or Federal law, ordinance, statute, rule or regulation.

4.15 Animals.

(a) Household Pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept on any Lot or other portion of the Development except that a reasonable number, as determined by the Board, of domesticated birds, cats, dogs or aquatic animals kept within an aquarium, may be kept, provided that they are not kept, bred, or maintained for any commercial purposes and they are maintained under reasonable control at all times, all in conformance with any City ordinances. Each dog must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of its owner's Lot.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this subsection. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees. Dog barking audible from within an adjacent Lot's Residence for more than ten (10) minutes within an hour shall constitute a nuisance pursuant to this Declaration.

(c) Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area and requirements that pets be registered with the Association. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or danger to any other person.

4.16 Rental of Lots. An Owner shall have the right to rent his or her Lot subject to the provisions of the Governing Documents, including without limitation the following specific requirements:

(a) Notification of the Board. The Owner shall notify the Association of the duration of the lease, a term of which shall not be less than thirty (30) days, and shall provide the Association with: (i) the names of the tenants; (ii) the names of the members of the tenants' household; (iii) the tenants' telephone numbers; and (iv) such other information as the Board deems appropriate. The Association may, in its discretion, adopt a form for the provision of the information required by this subsection, together with an acknowledgment by the tenants that they have read, understand and agree to abide by the Governing Documents, which form shall be submitted to the Association for each rental of a Lot.

(b) Owner Responsibility. Each Owner renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Lots and Common Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner renting a Lot shall provide the tenant with copies of the Governing Documents and all subsequent amendments. Owners renting a Lot shall provide the Board with a forwarding address so that the Owner may be contacted.

(c) Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, managers, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such cost, loss, claim or damages arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

(d) Requirements of Written Rental Agreement. Any rental of any Lot shall be only by written rental agreement which shall expressly provide: (i) that it is subject to all of the provisions of the Governing Documents; (ii) that the tenants of such Lot shall comply with all provisions of the Governing Documents; and (iii) that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such rental agreement. The rental agreement shall not attempt to, nor shall any such agreement be effective to, transfer membership in the Association to the lessee. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of thirty (30) days.

(e) Time Sharing and Short Term Accommodations Prohibited. No Lot shall be leased, subleased, occupied, rented, let, sublet or used for or in connection with any time sharing agreement, plan, program or arrangement, including without limitation any so called "vacation license", "travel club", "extended vacation", or other membership or time interval ownership agreement or use, including, but not limited to, Airbnb, Booking.com, Expedia, Hotels.com, Hopper, Orbitz, Travelocity, or VRBO. This subsection shall not be construed to limit the personal use of any Lot or any portion thereof, by any Owner, its live-in caregiver, or its social or familial guests.

4.17 Clotheslines and Sideyard Storage. Except as allowed by California Civil Code Section 4753, no exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained upon any Lot, except below the fence-line. No personal property shall be stored along the side yard area immediately adjacent to a Residence's garage, except below the fence-line and not visible from the Common Area, the streets or any other Residences.

4.18 Activities Affecting Insurance. Nothing shall be done or kept within the Development which will increase the rate of insurance maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept within the Development which would result in cancellation of any insurance policy maintained by the

Association or any other Owner.

4.19 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof. Notwithstanding the preceding, if any Lot is owned by two (2) or more co-tenants as tenants in common or as joint tenants, this Section shall not be deemed to prevent a judicial partition by sale as between such co-tenants.

4.20 Family Day Care Centers. No family day care center shall be permitted within the Development except as specifically mandated by California Health and Safety Code Section 1597.40 and other applicable statutes. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, in accordance with Health & Safety Code Section 1597.531. This subsection 4.20(a) is intended to be and shall be conclusively deemed to be the written notice to the operator and owner from the Association as specified in Health & Safety Code Section 1597.231;

(b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the day care center;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times for all persons for whom day care services are provided while such persons are within the Development; and

(e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these provisions, or other reasonable requests.

4.21 Community Care Facilities. Except for residential facilities defined as community care facilities under Health & Safety Code Section 1502, no health care facilities operating as a business or charity shall be permitted in the Development. The owner/operator of any permitted community care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a community care facility and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the community care facility;

(b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and

operation of the community care facility;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times all persons for whom community care services are provided while such persons are within the Development; and

(e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the community care facility to these provisions, or other reasonable requests.

4.22 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will: (i) cause substantial undue hardship to the Owner; or (ii) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

(a) Initial Board Determination. The Board, in its sole discretion, shall make an initial determination whether or not the variance on its face meets the requirements set forth in this Section. If the Board determines that it does not, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance does, the procedures set forth in the remainder of this Section shall be followed.

(b) Board Hearing. The Board shall conduct a hearing on the variance within forty-five (45) days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen (15) days prior to the date of the hearing. Members may submit comments in writing prior to the hearing and/or appear at the hearing. The Board shall establish a reasonable time limit for Member comments during the hearing. No decision regarding the request for variance shall be made until the conclusion of the hearing.

(c) Board Decision. After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this Section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

ARTICLE 5 IMPROVEMENTS TO LOTS/RESIDENCES; DISCLOSURES

5.1 Approval by Architectural Review Committee. Except for Improvements constructed or installed by Declarant, no building, fence, wall, pool or spa equipment, or other structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Review Committee for review and written approval as described in Article 8, below.

5.2 Accessory Dwelling Units; ADU; Junior Accessory Dwelling Units; JADU. In addition to the requirements for ADU's and JADU's as set forth in this Declaration, and as defined in 65852.2 and 65852.22 of the California Government Code, respectively, all ADU's and JADU's must be constructed in a professional and workman like manner and comply in all respect with all applicable laws and all restrictions contained herein applicable to the Residence on the Lots:

(a) Accessory Dwelling Unit; ADU. To the extent that an Owner desires to construct an ADU, or modify an existing ADU on the Property, the Owner shall submit plans and specifications in accordance with Article 8 of this Declaration prior to the commencement of any construction or modification of the ADU. The construction or modification of an ADU, shall require the written approval of the Architectural Review Committee.

(b) Junior Accessory Dwelling Unit; JADU. To the extent that an Owner desires to convert their garage into a JADU, or modify an existing JADU on the Property, the Owner shall submit plans and specifications in accordance with Article 8 of this Declaration and shall receive written approval prior to the commencement of any construction or modification of the JADU. The construction or modification of a JADU, shall require the written approval of the Architectural Review Committee.

5.3 Solar Systems. Subject to limitations imposed by California law, the Board shall be entitled to adopt, as part of the Architectural Guidelines, reasonable regulations regarding the installation of solar systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

5.4 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area and Association Maintenance Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other public authorities having jurisdiction.

5.5 Exterior Lighting and Fixtures. All lights installed on the exterior of a Residence or on a Lot shall be adequately and properly shielded from other Residences and the Common Area, such that direct rays from the light source are directed downward. Exterior lighting shall be directed so as to not adversely impact adjacent sites or traffic and shall comply with the City's Outdoor Lighting Control Ordinance. Light standards shall not exceed fifteen feet (15') in total height and shall comply with the provisions of the City's Outdoor Lighting Control Ordinance as well as the City's Security Ordinance. The Board may establish Architectural Guidelines regarding the placement of holiday lighting and decorations, including, but not limited to, the duration of display prior to and following the celebrated holiday.

5.6 Adjacent Land Use. By acceptance of a deed, all persons acquiring an ownership interest in a Lot within the Development and the Association acknowledge the Development is located adjacent to agricultural operations. The Association, its Board, and each Owner,

acknowledge and agree that the agricultural use of property adjacent to the Development, shall not constitute a public or private nuisance or otherwise create a legal or equitable claim against Declarant, the City, or the adjacent property owners, operators, tenants, or invitees.

5.7 No Structures or Debris. No structures or debris shall be visible from public view outside the fence on Lots adjacent to the greenway east of the Development. Structures or debris visible from public view shall be prohibited on side yards located adjacent to the greenways. Enforcement shall be the responsibility of the Association.

5.8 Building Height; Stories. Maximum building height shall be in compliance with City approved standards:

(a) Single Story. All Lots, with the exception of Condominiums and Care-giver Suites, shall be restricted to single story; and

(b) Care-giver Suites. Care-giver Suites designed for the live in care-giver, shall be generally located above the Residence garage. The design of the above garage Care-giver Suite shall include design elements that reduce the massing of the Residence and provide architectural relief to the facade. The Care-giver Suites shall be no larger than six hundred (600) square feet in size. The plans for the Care-giver Suites shall be reviewed by the Declarant at the time that the Owner submits the architectural plans for the Residence for approval. Upon written approval of the architectural plans by the Declarant, there shall be no further modifications to the design and placement of the Care-giver Suite. All proposed modifications to the existing plans as approved by the Declarant at the time that the Owner submits the architectural plans for the Residence, shall be submitted to the Architectural Review Committee for review. The Owner shall receive written approval by the Architectural Review Committee prior to the commencement of construction of the Improvements contained in ~~the modified~~ any proposed modification to approved plans.

5.9 Architectural Rules, Standards and Guidelines for Custom Lots. All Improvements, including, but not limited to building setbacks, accessory structures, maximum building height, facade, massing, parking spaces, garages, equipment, fencing, materials, storm drainage, address plaques, lighting, roofing materials, trash enclosures, landscaping and hardscape shall be subject to review and approval by the Architectural Review Committee and shall comply with all City design guidelines and standards.

5.10 Enclosed Side Yard and Rear Yard Landscape Installation; Maintenance. Each Owner of a Lot shall install landscaping within the fenced in side yards and rear yards on their Lot within thirty (30) days of occupancy, weather permitting. Each Owner shall maintain their fencing, enclosed side yard and rear yard landscaping in healthy, good condition and repair, kept free of trash, debris and weeds. Each Owner shall maintain and shall be responsible for the periodic pruning of any trees and the removal of any diseased or overgrown trees or any tree's root systems that are damaging any Common Area Improvement or any adjacent fencing or Improvements.

5.11 Fencing.

(a) Agricultural Buffer Transition Area. All perimeter fencing on the north and west sides of the project boundaries shall be of the tubular steel, see through style fencing.

(b) Greenways. All fencing design, material and construction details adjacent to public or private open space, roads, pedestrian or bicycle paths, shall be subject to review and written approval by the Architectural Review Committee prior to installation. All fencing adjacent to public property shall be placed fully on private property. The property Owner shall be responsible for maintenance and repair of the greenway fencing on their Lot.

(c) Greenway Fence Modification. Any future fence or gate modification along a public greenway or public street shall be subject to review and written approval by the Architectural Review Committee prior to installation or modification.

(d) Common Area Fencing. All fencing within the Association's Common Area shall be located fully on Common Area property. The Association shall own and be responsible for maintenance and repair of all fencing located in Common Area(s).

(e) Residential Lots. All fencing design, material and construction details for Residential Lots shall be ~~shall be~~ subject to review and written approval by the Architectural Review Committee prior to installation.

5.12 Age Restricted Owners and Non Age Restricted Owners. Owners acknowledge that the Development is subject to the provisions of Article 18 and are subject to the following:

(a) Percentage of Senior Citizen Residences. Owners acknowledge that the Development shall contain eighty percent (80%) senior citizen Residences and twenty percent (20%) non senior citizen Residences.

(b) Interspersed Residences. Owners acknowledge that the Development shall provide Residences that are designated as non senior citizen Residences and may be located adjacent to, next door to, and across the street from senior citizen Residences and that non senior citizen and senior citizen Residences may be interspersed within the overall Development.

5.13 Parks, Pedestrian and Bicycle Trails. Each Owner acknowledges the following:

(a) Parks. The Development contains Common Area Parks that are available for Public use;

(b) Pedestrian and Bicycle Trails. Pedestrian and bicycle trails are located within and near the Development and are available for Public use; and

(c) Quiet Enjoyment. The quiet use and enjoyment of the Owners may be disturbed as a result of the noise associated with the use of the pedestrian and bicycle trails during various times, including evening and nighttime hours.

5.14 Existing Agricultural Operations. The Lots within the Development are located near existing agricultural operations. Residents may be subject to customary and accepted farming practices that produce noise, dust, smoke and other impacts. The Owners and Residents accept the potential impacts of customary farming practices, which may include the application and use of

various chemicals through spraying, spreading or other customary means in accordance with applicable state and federal regulations regarding such applications. The Owners and Residents acknowledge the need to avoid activities that conflict with nearby farm uses.

5.15 City of Davis Agricultural Disclosure; Right to Farm. The City of Davis, Yolo and Solano Counties permit operation of properly conducted agricultural operations within the city and the Counties.

(a) You are hereby notified that the property you are purchasing/leasing/renting is located within 1,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but are not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents and/or the operation of machinery (including aircraft) during any 24-hour period.

(b) One or more of the inconveniences described may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

(c) Lawful ground rig or aerial application of pesticides, herbicides and fertilizers occur in farming operations. Should you have concerns about spraying, you may contact either the Yolo or Solano County Agricultural Commissioners.

(d) The City of Davis' Right to Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with law. Should a farmer, agricultural processor or other person not comply with appropriate state, federal or local laws, legal recourse is possible by, among other ways, contacting the appropriate agency.

(e) In addition, the City of Davis has established a grievance procedure to assist in the resolution of disputes which arise between the residents of the city regarding agricultural operations.

(f) This notification is given in compliance with Davis City Code Section 40A.01.040.

(g) The failure to include the foregoing notice shall not invalidate any grant, conveyance, lease or encumbrance.

(h) The notice required by this section shall be included in every agreement for transfer entered into after the effective date of this chapter, including property subject to the deed restriction cited in Section 40A.01.030. (Ord. 1823 § 1).

5.16 Existing Commercial Uses. The Development is located adjacent to property zoned for and subject to on-going commercial uses and Sutter Davis Hospital. The commercial use of the Sutter Davis Hospital shall include any expansion of the medical facilities over time. The

Association, its Board, and all Owners and Residents are advised that commercial operations related to the adjacent property may take place at any time of the day or night, including, for example and without limitation, night-time security lighting, noise, day and night commercial truck deliveries and vehicle dispatching, delivery truck engine and hydraulic lift operations, telephone ringing and paging through loudspeakers, and increased noise, music, light, dust, exhaust, and odor due to pedestrian and vehicle traffic due to commercial, medical and hospital activities. The Association, its Board, ~~and each Owner~~ Owners and Residents, acknowledge and agree that the commercial use of the property adjacent to the Development, shall not constitute a public or private nuisance or otherwise create a legal or equitable claim against Declarant, the City, or the adjacent property owners, operators, tenants, or invitees.

ARTICLE 6 ASSESSMENTS AND LIENS

6.1 Covenant of Owner.

(a) Owner's Assessment Obligation. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Regular Assessments; (ii) Special Assessments; (iii) Reimbursement Assessments; and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens as hereinafter provided.

(b) Owner's Personal Obligation. Each Assessment levied by the Association under this Article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot under an installment land contract shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and shall be secured by a lien upon the property against which such Assessment is levied, notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, 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 shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such

Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for: (i) managing and operating the Development; (ii) conducting the business and affairs of the Association; (iii) maintaining and promoting the property values of the Owners and Residents of the Development; (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development; (v) enforcing the Governing Documents; and/or (vi) otherwise benefitting the Owners.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, or as otherwise provided by law, the Board shall complete and distribute to all Owners an estimate of the net funds (after any payments to the Association under the Shared Facilities Agreement) required by the Association for such fiscal year (including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis) to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration. The funds required by the Association pursuant to this subsection shall be assessed among the Owners of Lots as "Regular Assessments" as further provided in this Section 6.5.

(b) Regular Assessment Components. Regular Assessments shall consist of the following components:

(i) General Budgeted Expenses. The "General Assessment Component" of the Regular Assessments shall consist of the budgeted expenses of the Association, as described in Section 6.5(a), excluding any Cost Center and expenses as such expenses are more particularly described in subsection 6.5(b)(ii), below.

(ii) Special Benefit Expense Component. The "Special Benefit Expense Component" of the Regular Assessments shall consist of the expenses described in this subsection 6.5(b)(ii). Declarant and the Association shall have the power and authority to establish additional Special Benefit Expense Components by designating Lots and Common Area within the Development as "Cost Centers" for purposes of expense accounting and the equitable allocation of Regular Assessments. A Cost Center is likely to be designated when one of the following occurs: (A) the maintenance or use of a particular Improvement or maintenance area within the designated Cost Center is fully or partially restricted to Owners of Lots located within the area designated as a "Cost Center", or (B) when certain Owners of Lots within a designated Cost Center are receiving services from the Association that are

in addition to, or significantly greater than, the services provided to other Owners. Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) more than Owners in general in the value of a common service(s) supplied by the Association. In addition to the Cost Centers established in this Declaration, additional Cost Centers may be designated in a Declaration of Annexation or Supplemental Declaration which shall: (i) identify the Lots comprising the Cost Center; (ii) identify the Common Area, Association maintenance areas or other services that will exclusively or disproportionately benefit the Owners of said Lots; and (iii) provide for the allocation of common expenses attributable to the identified Common Area, Association maintenance areas or services to Owners within the Cost Center as a Special Benefit Expense Component of their Regular Assessment. In addition, the initial Special Benefit Expense Components for the Development shall be the following categories:

- (A) Private Drives Cost Center. The “Private Cost Center of Special Benefit” of the Regular Assessments shall consist of all expenses incurred by the Association attributable to the maintenance, repair, replacement (including reserves), management and insurance of the private drives and entry gates located within the Development which serve only specific Lots and are not generally accessible or intended for use by the Association’s membership in general.
- (c) Allocation of Regular Assessment.
- (i) General Assessment Component. The General Assessment Component of the Regular Assessments shall be allocated and assessed equally among the Lots within the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the General Assessment Component of the Regular Assessment.
- (ii) Private Drives Cost Center of Special Benefit. The Private Drives Cost Center of Special Benefit of Regular Assessments shall be allocated and assessed equally among the Owners of a Lot being served by a private drive by dividing the amount by the number of Lots within the Private Drives Cost Center of Special Benefit, so that each Owner within the Private Drives Cost Center of Special Benefit bears an equal share of the Private Drives Cost Center of Special Benefit of Regular Assessments for each Lot served by a private drive owned by the Owner. The initial Lots within the Private Drives Cost Center of Special Benefit shall be shown on the Subdivision Map. Additional Lots to be included within the Private Drives Cost Center of Special Benefit shall be designated in a Declaration of Annexation.
- (iii) Additional Cost Center Components. In the event one (1) or more Cost Centers are established, the Special Benefit Assessment Component of Regular Assessments shall be allocated and assessed equally among the Lots within a Cost Center by dividing the Special Benefit Assessment Component amount by the

number of Lots within the Cost Center, so that each Lot within the Cost Center bears an equal share of the Special Benefit Assessment Component as part of their Regular Assessment.

(d) Payment of Regular Assessments. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

(e) Increases in Regular Assessment.

(i) General Assessment Component. Pursuant to California Civil Code Section 5605(b), except as otherwise provided by law, the Board shall not increase the General Assessment Component of Regular Assessments for any fiscal year above the amount of the General Assessment Component of Regular Assessments for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

(ii) Cost Center Assessment Components. Pursuant to California Civil Code Section 5605(b), except as otherwise provided by law, the Board shall not increase a Cost Center Assessment Component of Regular Assessments for any fiscal year above the amount of the Cost Center's Assessment Component of Regular Assessments for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners subject to the Cost Center voting on any such increase in the Cost Center Assessment Component, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members subject to the Cost Center, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

(f) Commencement of Regular Assessment. Regular Assessments shall commence as to each Lot within the Development on the first day of the first month following the month in which the first conveyance occurs for the sale of a Lot to a person other than Declarant. Each Lot within the Development shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

(g) Partial Assessment Exemption for Vacant Residential Lots. Any Lot within the Development without a Residence shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the Association's maintenance of the Lot's landscaping pursuant to subsection 7.1(g), below. The exemption from the payment of Assessments attributed to uncompleted front yard landscaping of a Lot shall be in effect only until the earliest of the

following events: a notice of completion of the construction of the Lot's Residence has been Recorded; occupation or use of the Lot's Residence; or completion of all elements of the Lot which the Association is obligated to maintain.

(h) Partial Assessment Exemption for Uncompleted Common Area. In addition to the foregoing Regular Assessment exemption attributable to uncompleted Residences, all Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area Improvement that is not completed at the time Assessments commence. The Assessment exemption provided by this subsection shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Area has been Recorded; or (B) the Common Area has been placed in use.

6.6 Range of Assessments. Range of Assessments shall consist of the following:

(a) Purpose of Range of Assessments. Declarant has submitted to the California Department of Real Estate a Range of Assessments budget as described in Section 1.36. The Association's phased budget may show that the budgeted regular assessment amounts change as assessments commence against additional Phases within the Community during the period in which the Development is being developed and marketed. However, the Board shall have the right to reasonably vary the regular assessment amounts from the budgeted assessment amounts. It is anticipated that the Board may decide to not change or to delay the changes in the regular assessment amounts as assessments commence against subsequent Phases in order to avoid the confusion and administrative burden which would result from multiple changes in the regular assessment amounts. Notwithstanding any limitations contained in the Declaration to the contrary, in the event that the amount of the regular assessments set forth in the budget reviewed by the California Department of Real Estate is greater than the amounts permitted to be increased by this Declaration without the approval of Owners pursuant to Section 2.3(d), the Board on behalf of the Association and without the requirement of prior notice to the Members or a vote of Members of the Association, shall be entitled to increase the maximum regular assessment at the time to an amount which is within the Range of Assessments reviewed by the California Department of Real Estate and in accordance with California law.

(b) Range of Assessments. During the period the Development is being built out, Lots in the Development will be sold in Phases in accordance with the provisions of this Declaration. Since Regular Assessments will be adjusted each time the Lots in a Phase commence (i.e., subject to the terms of any maintenance and/or subsidy agreement entered into by the Association and Declarant, Regular Assessments in each Phase commence on the first day of the first month following the first close of escrow for the sale of a Lot in such Phase, or on the first day of the first month following the first occupancy of a Lot in such Phase pursuant to a rental or lease agreement with Declarant, or its authorized agents, whichever occurs first) and because the commencement of Regular Assessments in the Phases might occur in quick succession, in order to avoid the confusion and administrative burden which would result from multiple changes in the amount of the Regular Assessments as Regular Assessments commence against the Phases, Declarant, under the California Department of Real Estate's ("DRE's") review, has established a "Range of Assessments"

procedure which, subject to the provisions set forth herein for adjustment, shall be applicable to all Phases. Unless terminated earlier by Declarant with the DRE's acceptance, the Range of Assessments procedure set forth herein shall be effective until Regular Assessments commence against all Lots in the Development.

(c) Calculation of Range of Assessments. The Range of Assessments has been established by calculating an initial "Minimum Authorized Regular Assessment" and a "Maximum Authorized Regular Assessment". Subject to the provisions of subsection (vii), below, the Minimum and Maximum Authorized Regular Assessments constitute, respectively, the lowest Regular Assessment and highest Regular Assessment that may be established by the Board during the development of the Development. The Range of Assessments has been created in contemplation that, upon the commencement of Regular Assessments in each of the Phases of the Development, the Board shall levy Regular Assessments that fall within the Range of Assessments accepted by the DRE and set forth in the Final Subdivision Public Reports issued by the DRE for such Phases. Notwithstanding the foregoing, the initial Range of Assessments (and corresponding Minimum and Maximum Authorized Regular Assessments) accepted by the DRE may be recalculated and adjusted with the approval of Declarant and the DRE in order to account for various changes in circumstances (including, but not limited to, construction of additional Improvements in the Common Area, the delegation to or assumption by the Association of additional maintenance responsibilities, and the incurring of unanticipated extraordinary expenses by the Association). Neither Declarant nor the DRE will undertake a review of the Association Budget for each Phase of the Development, unless the Regular Assessment proposed to be levied by the Board falls outside the approved Range of Assessments.

(d) Fluctuation of Regular Assessments. As Regular Assessments commence against the Phases in the Development, the Regular Assessments may be adjusted, upwards or downwards, subject to the limitations set forth in subsections (v) and (e), below. To facilitate the orderly levy and collection of Regular Assessments, the Board may establish a "mean" monthly installment of the Regular Assessment at a level sufficient to defray the Common Expenses of the Association during the development of the Development.

(e) Consent of Declarant Required. So long as Declarant is offering any Lots for sale in the Development pursuant to a Final Subdivision Public Report, the Regular Assessments may not be decreased below the Minimum Authorized Regular Assessment, or increased above the Maximum Authorized Regular Assessment without the express written consent of Declarant and the DRE and only so long as such increase or decrease occurs in a manner consistent with applicable law. Nothing herein shall limit the Association, upon ratification by a majority of the Board, from entering into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

6.7 Special Assessments.

(a) Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any

authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots within the Development in the same manner as Regular Assessments.

(c) Approval of Special Assessments.

(i) General Assessment Component. Except in the case of an emergency situation as defined in California Civil Code Section 5610, in any fiscal year the Board may not levy Special Assessments for the General Assessment Component expenses which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the General Assessment Component of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

(ii) Cost Center Assessment Components. Except in the case of an emergency situation as defined in California Civil Code Section 5610, in any fiscal year the Board may not levy Special Assessments for a Cost Center Assessment Component expense which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Cost Center Assessment Component of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members subject to such Cost Center, voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members subject to the Cost Center, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.8 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot: (i) if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance; or (ii) in the event that the Association has expended funds performing repairs as authorized by Section 7.4 of this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.9 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the

Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Regular Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

6.11 Offsets. Except as permitted by subsections 6.5(f) and (g), above, all Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to late charges not to exceed the maximum rate permitted by law. In addition, interest on all sums imposed in accordance with this Article, including the delinquent Assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed twelve percent (12%), shall commence thirty (30) days after the Assessment becomes due. The Association may Record a lien against an Owner's Lot for delinquent Assessments and all Additional Charges as provided in Section 6.12, below, and in accordance with the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000 et seq.

6.13 Assessment Liens.

(a) Notice of Collection and Lien Enforcement Procedure. At least thirty (30) days prior to Recording a lien upon an Owner's Lot to collect an Assessment debt that is past due under this Article 6, the Association shall notify the Owner in writing by certified mail of the following:

(i) A general description of the Association's collection and lien enforcement procedures and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records, pursuant to California Corporations Code Section 8333, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(ii) An itemized statement of the Assessments and Additional Charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(iii) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(iv) The right to request a meeting with the Board by submitting a written request to meet with the Board to discuss a payment plan for the Assessment and Additional Charges debt noticed pursuant to subsection 6.12(a)(ii).

(v) The right of the Owner to dispute the Assessment and Additional Charges debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program.

(vi) The right of the Owner to request alternative dispute resolution with a neutral third party before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(vii) A statement that an Owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

(b) Payments Made by Owner. Any payments made by the Owner toward the debt set forth shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the Additional Charges. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

(c) Owner's Authority to Bring Small Claims Action. If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in California Code of Civil Procedure Sections 116.220 and 116.221, the Owner of the Lot may, in addition to pursuing dispute resolution pursuant to California Civil Code Section 5900 et seq., pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to California Civil Code Section 5650(b), and commence an action in small claims court pursuant to California Code of Civil Procedure Section 116.110 et seq. Nothing in this subsection shall impede the Association's ability to collect delinquent assessments as provided in California Civil Code Section 5700 et seq.

(d) Meet and Confer Program. Prior to Recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program

or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(e) Decision to Record a Lien. The decision to Record a lien for delinquent Assessments, which is otherwise permitted by this Section 6.12, shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting. The Board shall record the vote in the minutes of that meeting.

(f) Payment Plan. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to Record a lien on the Owner's Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(g) Recordation of the Notice of Delinquent Assessment. The amount of the Assessment, plus any Additional Charges shall be a lien on the Owner's Lot from and after the time the Association causes to be Recorded, a Notice of Delinquent Assessment, which shall state the amount of the Assessment and Additional Charges imposed, a legal description of the Lot against which the Assessment and Additional Charges are levied, and the name of the Record Owner of the Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner shall be Recorded together with the Notice of Delinquent Assessment.

(i) The Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale.

(ii) The Notice of Delinquent Assessment shall be signed by the President of the Association or the Association's account manager as permitted by California Civil Code Section 5675(d). The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association.

(iii) A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation.

(iv) Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(h) Assessment Liens for Repair of Common Areas. Unless otherwise permitted by law, a Reimbursement Assessment 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 facilities for which the Member or the Member's guests or tenants were responsible may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(i) Enforcement Assessments and Penalties. An Enforcement Assessment or monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for late payments of Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(j) Assignment of the Association's Lien Right. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under Federal or State law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. After the expiration of thirty (30) days following the Recording of a lien, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with California Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d, plus the cost of service for either of the following:

(i) The notice of default pursuant to California Civil Code Section 5710(b).

(ii) The decision of the Board to foreclose upon an Owner's Lot as described in California Civil Code Section 5705(d).

(k) Actions Against Owners. Nothing in this Section or in California Code of Civil Procedure Section 726(a) prohibits actions against the Owner of a Lot to recover sums for which a lien is created pursuant to this Section or prohibits the Association from taking a deed in lieu of foreclosure.

(l) Lien Recorded in Error. If it is determined that a lien previously Recorded against a Lot was Recorded in error, the Association shall, within twenty-one (21) calendar days, Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot with a declaration that the lien filing or Recording was in error and a copy of the lien release or notice of rescission.

(m) Notice of Default. A notice of default shall be served by the Association on the Owner's legal representative, in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq. The Owner's legal representative shall be the person whose name is shown as the Owner of a Lot in the Association's records, unless the Owner in writing, delivered to the Association in a manner that indicates that the Association receives it, designates another person as his or her legal representative.

(n) Secondary Address. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code Section 5300(a). The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(o) Failure to Comply with Procedures. If the Association fails to comply with the procedures set forth in this Section, the Association shall, prior to Recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Lot.

(p) Collection of Delinquent Assessments. If the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated assessments, and Additional Charges, the Association shall not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(i) By a civil action in small claims court.

(ii) By Recording a lien on the Owner's Lot which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, and Additional Charges, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800) or the Assessments secured by the lien are more than twelve (12) months delinquent. If the Board elects to Record a lien under these provisions, prior to Recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in California Civil Code Section 5900.

(iii) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

6.14 Foreclosure of Association Assessment Liens.

(a) Conditions Permitting Foreclosure. Except for Assessments owed to the Association by Declarant, if the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800) or more, not including any accelerated assessments, or Additional Charges, or any Assessments secured by the lien that are more than twelve (12) months delinquent, the Association may use judicial or non-judicial foreclosure subject to the following conditions:

(i) Meet and Confer Program. Prior to initiating a foreclosure on an Owner's Lot, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(ii) Decision to Foreclose. The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly Recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the Owner's Lot number as shown on the Subdivision Map, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(iii) Notice. The Board shall provide notice by personal service in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq., to an Owner of a Lot who is a Resident of the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner of a Lot who is not a Resident of the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Lot may be treated as the Owner's mailing address.

(iv) Right of Redemption. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this subsection ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of a Lot shall include a statement

that the Lot is being sold subject to the right of redemption created by California Civil Code Section 5715(b).

(b) Declarant Exception. The limitation on foreclosure of Assessment liens for amounts under the stated minimum in this Section does not apply to Assessments owed by Declarant.

(c) Recordation of Lien in Error. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party that the Association has Recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all Additional Charges, costs imposed for the notice, and costs of Recordation and release of the lien and pay all costs related to the dispute resolution or alternative dispute resolution.

(d) Small Claims Court. The Association may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of the Association.

6.15 Priority. The lien of the Assessments provided for under this Article, including interest and costs (including attorneys' fees), shall be prior and superior to: (a) any declaration of homestead Recorded after the Recordation of this Declaration; and (b) all other liens, except: (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded prior to the date on which a lien against the respective Lot was Recorded. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.16 Association Funds. All Association accounts shall be maintained in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above. The Association and its managing agent, if any, shall comply with California Civil Code Section 5380.

6.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article.

6.18 Trustee's Deed Upon Sale. The Association may Record a request that a Mortgagee, trustee, or other person authorized to Record a notice of default regarding any Lot mail to the Association a copy of any trustee's deed upon sale concerning the Lot. The request shall include the legal descriptions or the assessor's parcel numbers of the Lots, the name and address of the Association, and a statement that it is a homeowners' association. Subsequent requests of the Association shall supersede prior requests. The request shall be Recorded before the filing of a

notice of default. The Mortgagee, trustee, or other authorized person shall mail the requested information to the Association within fifteen (15) business days following the date the trustee's deed is Recorded.

ARTICLE 7 MAINTENANCE OF PROPERTY

7.1 Association Responsibilities. The Association shall have the following maintenance responsibilities:

(a) Association Maintenance Area. The Association shall maintain the Association Maintenance Area any portion of the development, and any real property maintained but not owned by the Association, including, but not limited to, cluster mailboxes, street lights, front yard landscaping and irrigation systems located on the Lots within the Development, as well as the landscaping on any unfenced portion of the rear of a Lot adjoining the private greenways, the street trees, landscape strips, and signage, in the public right-of-way.

(b) Common Area. The Association shall maintain the Common Area, including, but not limited to, recreation areas, the landscaping areas, pedestrian paths, walkways, parks, greenways, in good condition and repair, and specifically as follows:

(i) Tree Maintenance. All trees planted or preserved in the Association's Common Area and Association Maintenance Area within the Development in accordance with the Conditions of Approval shall be trimmed and maintained per guidelines established and approved by the International Society of Arboriculture (ISA). Any pruning of the trees, other than light pruning of no more than twenty-five percent (25%) of the foliage within any one (1) growing season, requires review and approval of a Tree Modification Permit prior to the commencement of the work. Trees planted in the private drives or public access streets, Association Maintenance Area or Common Area space lots within the Development are to be privately maintained;

(ii) Acorns to Oaks. The Association shall maintain all oak trees within the Common Areas and Association Maintenance Areas in accordance with City specifications and standards.

(iii) Public Art. The Association shall maintain all Public art within the Development in accordance with City specifications and standards.

(iv) Accent Landscaping. The Common Area and Association Maintenance Area landscaping and irrigation shall be maintained by the Association; and

(v) Irrigations Systems. All plant materials, including ground cover, shall be serviced with an automatic irrigation system.

(c) Enhanced Surface Treatments. The Association shall be responsible for the repair and/or replacement of non-standard improvements (i.e. concrete, hardscape, special

pavement, etc.) within the public and private drives within the Development in the event that these improvements are damaged in the process of maintaining, repairing or replacing underground utilities within the easement.

(d) Cluster Mailboxes. To the extent that the cluster mailboxes are not maintained by another entity, the Association shall maintain, repair and replace the cluster mailboxes.

(e) Utility Connections. Utility lines and connections, including without limitation, electrical, cable television, telephone, telecommunication, and gas lines, which are located on, under, or over the Common Area and Association Maintenance Area, shall be maintained, repaired and replaced by the Association or by the utility company providing such service.

(f) Perimeter Walls and Fences. The Association shall maintain, repair and replace all walls and fences facing or abutting Common Area or bordering any property located outside the Development. In addition, the Association shall cause the removal of any graffiti on all walls and fences facing the Common Area or located on the perimeter of the Development within seven (7) days of when it appears.

(g) Front Yard and Private Drive Landscaping. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the landscaping, irrigation system and the water supply located within the front yard of each Lot, as well as the landscaping on the unfenced portion of the rear of a Lot adjoining the private drives. The Association's landscape maintenance pursuant to this subsection shall include repairing sprinklers and periodically inspecting the irrigation system to ensure proper water use and to correct any leaks or excessive watering.

(h) Improvements in Public Right-of-Way. To the extent that the Improvements in the public right-of-way are not maintained by the City, the Association shall be responsible for maintaining the trees and landscape strips, street, curb, gutter, sidewalk and street lights.

(i) Entrance Signs. The Association shall maintain, repair and replace all signs whether located on the Common Area, Association Maintenance Area or a Lot.

(j) Maintenance Manual. The Association shall comply with provisions of any Common Area and Association Maintenance Area maintenance manual, if one is provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to any maintenance manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

(k) Association Inspections.

(i) Common Area and Association Maintenance Area Inspections. The Association shall regularly inspect, maintain and repair the landscaping, irrigation, and drainage systems serving or within and any Improvements constructed upon the

Common Area and Association Maintenance Area. The Association shall employ the services of a professional landscape architect, maintenance contractor, reserve study analyst or other such professional person to assist the Association in performing such inspections. The inspector shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems within the Common Area and Association Maintenance Area. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) if so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the next regularly scheduled Board meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes.

(ii) Lot Access. As part of the inspection of Common Area and Association Maintenance Area, should an Association inspector require access over any Lot, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, in accordance with Sections 7.6 and 9.4, below, to conduct such inspections and to provide such maintenance, repair and replacement. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

(l) Compliance with Warranties. The Association shall have the duty to execute all necessary documents to effectuate any warranties offered by Declarant as to the Common Area and Association Maintenance Area or any property maintained by the Association.

(m) Owner's Responsibility for Consequential Damage. An Owner is responsible for the cost of repair of those portions of the Owner's Lot and Residence, including fixtures and personal property, which are required to be maintained by the Owner, even if the cause of the damage originates from a source maintained by the Association, unless the cause is the gross negligence of the Association or its agents. As an example, water damage to a Residence that is caused by an Association maintained irrigation system is the responsibility of the Owner even though the repair of the irrigation system is the responsibility of the Association.

(n) Other Association Property. The Association shall maintain, repair and replace all other real and personal property that may be acquired by the Association, keeping such property in good condition and repair.

7.2 Owners' Responsibilities. Each Owner shall be solely and exclusively responsible for the maintenance, repair and replacement of his or her Lot and all Improvements thereon, and shall keep the same in good and attractive condition and repair. Each Owner's obligations shall include, without limitation, the following:

(a) Residence and Other Improvements. Each Owner shall maintain, in good and attractive condition and repair, the Residence and other buildings and Improvements located on his or her Lot. The garage door for the garage of the Residence shall be maintained in good condition, appearance and repair.

(b) Landscaping. Except for landscaping maintained by the Association in accordance with subsection 7.1(g), above, each Owner shall maintain any landscaping on his or her Lot in a neat and attractive condition. Each Owner shall complete the installation of backyard landscaping on his or her Lot within thirty (30) days of occupancy of the Lot's Residence, weather permitting. To the extent that the Owner is unable to complete the landscape installation within the thirty (30) day requirement, the Owner shall submit the request for an extension in writing to the Architectural Review Committee. Prior to commencing installation of landscaping within an enclosed yard, each Owner shall comply with the drainage restrictions described in Section 5.4, above, and shall obtain Architectural Review Committee approval of the proposed landscaping.

(c) Utility Connections. Utility lines and connections, including without limitation, water, sewer, electrical, cable television, telephone and gas lines, which are located on, under, or over any Lot and which provide service to the Residence or other Improvements located upon such Lot, shall be maintained, repaired and replaced by the Owner of such Lot or by the utility company providing such service.

(d) Owner Maintenance of Fences and Party Walls. Each Owner shall maintain, repair and replace all fences and party walls in accordance with the following provisions:

(i) General Rules of Law to Apply. Each fence placed on the dividing Lot line between two (2) Lots shall be subject to California Civil Code Section 841, as well as the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) Sharing of Repair and Maintenance. The cost of maintenance and repair of a fence shall be equally shared by the Owners who make use of the fence without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under California Civil Code Section 841, as well as any rule of law regarding liability for negligent or willful acts or omissions.

(iii) Access Rights. Each Owner sharing a common fence shall have access over the adjoining Lot sharing the fence to the extent necessary to perform maintenance on the fence or to replace same.

(iv) Fencing Within a Lot. Fencing within a Lot that is not shared with another Lot shall be maintained, repaired and replaced by the Owner of such Lot. Except for the fence located along the Western boundary of Lot 5, which shall be

maintained by the Association, all fences that border adjacent subdivisions or parcels outside of the Development shall either be maintained by the Lot Owner or shared with the adjacent property owner as provided in California Civil Code Section 841.

(v) Fencing Between Common Area and Lots. The cost of maintenance and repair of a fence between the Common Area and a Lot shall be the sole obligation of the Lot's Owner. The provisions of this subsection (v) shall constitute the agreement allocating responsibility to the Lot Owner pursuant to California Civil Code Section 841(b)(1).

7.3 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot, including landscaping, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 8.

7.4 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 7.6, in the event an Owner fails to perform such work within ten (10) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

7.5 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

7.6 Authority for Entry of Lot. The Association or its agents may enter any Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 9.4. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot, Common Area or Association Maintenance Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

7.7 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

7.8 Association Liability. The Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.9 Board Discretion. Except as provided in subsections 7.1(j),(k), and (l), above, the Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.

7.10 Inspection of Property Maintained by Association. For all property and Improvements required to be maintained by the Association pursuant to Section 7.1, above, the Board shall cause the inspection of the condition of such property and Improvements as provided in this Section. Inspections shall be conducted in accordance with any applicable maintenance manuals, and in the absence of inspection frequency recommendations in any applicable maintenance manuals, at least once every three (3) years, in conjunction with the inspection required for the reserve study conducted pursuant to Section 9.3 of the Bylaws.

ARTICLE 8 ARCHITECTURAL CONTROL

8.1 Architectural Review Process.

(a) Purpose of Architectural Regulation Authority. It is intended that the Development be developed with various Improvements that are architecturally compatible and aesthetically pleasing, and that those initial Improvements be maintained in essentially the same condition and appearance as originally developed for the duration of the term of this Declaration. The architectural and use controls set forth herein are to facilitate those intentions and purposes and are to be construed consistent therewith. Subject to the criteria described in Section 8.8, below, the Architectural Review Committee shall review all proposed Improvements and changes to existing Improvements regarding: (i) design; (ii) harmony of external design in relation to the nature and character of the Development and the Improvements thereon; and (iii) location in relation to surrounding structures, topography, finished grade elevation.

(b) Submission of Plans and Specifications. Except as provided in subsection 8.1(c), the construction, installation, placement or alteration of Improvements visible from the exterior of a Residence shall be subject to this Article 8.

(i) Residences and Structures. All Improvements including without limitation Residences, buildings, fences, walls, obstructions, balconies, screens, patio covers, awnings, or other structures of any kind, shall be commenced, located, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. Notwithstanding this subsection, and provided that the existing color and finish were approved by the Architectural Review Committee in the first

instance, an Owner may repaint and refinish the exterior of the Improvements on his or her Lot in an identical color and finish without the approval of the Architectural Review Committee.

(ii) Enclosed Yard Area. If the Lot includes an enclosed yard area, all Improvement and proposed landscaping within such area which is or may become visible above the fence line or which alter the Lot's drainage, and all Improvements which generate noise, including but not limited to motorized equipment, shall be subject to the approval of the Architectural Review Committee in accordance with this Article.

(c) Exemption of Declarant from Committee Approval Requirements. Declarant shall not be subject to the provisions of this Article 8 and shall not be required to seek the approval of the Architectural Review Committee with respect to any of its activities within the Development.

8.2 Establishment of Architectural Review Committee.

(a) Composition of the Committee, Generally. The Architectural Review Committee shall consist of three (3) members. The composition of the Architectural Review Committee will evolve during the development of the Development, as follows:

(i) Initial Declarant Appointments. Declarant may appoint all of the members of the Architectural Review Committee and all replacements until the first anniversary of the issuance of the first California Department of Real Estate final public report for Phase 1.

(ii) Initial Board Appointment. Beginning with the first anniversary of the issuance of the first California Department of Real Estate final public report for Phase 1, Declarant may appoint a majority of the members of the Architectural Review Committee. The remaining member of the Architectural Review Committee shall be appointed by the Directors other than Declarant or Declarant's representative.

(iii) Full Board Appointments. At the earlier to occur of: (A) the conveyance by Declarant of ninety percent (90%) of the Lots within the Development; or (B) the fifth (5th) anniversary date of the original issuance of the California Department of Real Estate final public report for Phase 1, the Architectural Review Committee shall become a committee of the Association and all members of the Committee shall be appointed by the Board.

(b) Board as Committee. If at any time there shall not be a duly-constituted Architectural Review Committee, the Board shall exercise the functions of the Architectural Review Committee in accordance with the terms of this Article.

8.3 Duties. It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and

to carry out all other duties imposed upon it by this Declaration. All decisions regarding proposed Improvements shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

8.4 Meetings. The Architectural Review Committee shall meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Review Committee shall be the act or decision of the Architectural Review Committee. The Architectural Review Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Review Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee function.

8.5 Architectural Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Review Committee review and guidelines for architectural design, placement of Residences and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents.

8.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Architectural Review Committee or Board may require, including without limitation samples of proposed paints in such sizes and formats as the Committee or the Board may deem appropriate. In accordance with subsection 10.5(c), and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to submit an application, and obtain the required approval thereof, prior to proceeding with any Improvement for which approval is required pursuant to this Article. Except as provided in the last sentence of subsection 8.1(b)(i), any Owner who paints his or her Residence or any other Improvement without first submitting an application and obtaining the approval required by this Article may be required, in the Board's discretion, to repaint the Residence or Improvement.

8.7 Fees. The Architectural Review Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors. In addition to review fees, the Architectural Review Committee may require an Owner to post a deposit for major or even minor Improvements when submitting plans to the Committee to ensure compliance with the Architectural Rules and this Declaration. The Committee shall establish a schedule or formula for determining a different amount of the deposit, and may require a separate deposit for proposed landscaping improvements. Owners acknowledge that all or a portion of any deposit may be forfeited to the Association if the Owner fails to properly and timely complete works of Improvement in accordance with approved plans and specifications or if an Owner or an Owner's agents cause damage to the Common Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard, in accordance with California Civil Code Section 4820.

8.8 Grant of Approval. The Architectural Review Committee shall grant the requested approval only if:

(a) Application. The Owner has complied with the application submission procedures established by this Declaration and any applicable Architectural Rules;

(b) Plans and Specification. The Architectural Review Committee finds that the plans and specifications conform to both: (i) this Declaration; and (ii) the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to Section 8.18;

(c) Aesthetics and Workmanship. The Architectural Review Committee determines that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations; and

(d) Compliance With Law. The decision regarding the requested approval of the proposed Improvement does not violate any governing provision of law, including but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety, and is in conformance with California Civil Code Sections 4720 and 4735.

8.9 Form of Approval. All approvals and denials of requests for approval shall be in writing and no verbal approval of a request for approval is permitted by any member of the Architectural Review Committee or the Association. The Architectural Review Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Review Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety.

8.10 Appeal of Denial to Board. In accordance with California Civil Code Section 4765(a)(5), unless the Architectural Review Committee is comprised of the Directors, who make their decision at a Board meeting, if an Owner's Improvement application is disapproved by the Architectural Review Committee, the applicant shall be entitled to request reconsideration by the Board. The Board shall consider the reconsideration request at a meeting held in accordance with California Civil Code Section 4900.

8.11 Time for Architectural Review Committee Action. Any request for approval which has not been acted upon by the Architectural Review Committee within forty-five (45) days from the date of receipt thereof by the Architectural Review Committee shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Review Committee by evidence in the form of either a copy of such request for approval date-stamped by the Association or by a return receipt provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

8.12 Commencement. Upon receipt of approval pursuant to this Article, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety (90) days from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

8.13 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed as though the failure to complete the Improvements was a non-compliance with approved plans.

8.14 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Owner's Notice of Completion. Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Review Committee.

(b) Committee Inspection. Within sixty (60) days after the receipt of such written notice, the Architectural Review Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Review Committee finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.

(c) Hearing Regarding Non-Compliance. If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Review Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Review Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Review Committee and, in the discretion of the Board, to any other interested party.

(d) Determination of Non-Compliance. At the hearing the Owner, the Architectural Review Committee and, in the Board's discretion, any other interested person,

may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either, grant a variance for such non-compliant Improvement, remove the non-complying Improvement, or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) Failure to Notify Owner of Non-Compliance. If, for any reason, the Architectural Review Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Architectural Review Committee by evidence in the form of either a copy of such notice date-stamped by the Association's office or by a return receipt provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

8.15 Non-Waiver. The approval by the Architectural Review Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Review Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

8.16 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 (as fixed from time to time by the Board), the Board shall provide an Owner with an estoppel certificate, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by such Owner comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

8.17 Liability. Neither Declarant, Association, Board, the Architectural Review Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and 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 of any portion of the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 8.16, whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Architectural Review

Committee, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Review Committee. Every Owner, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against Declarant, Association, Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

8.18 Variances.

(a) Reasonable Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article and those minimum construction standards in Article 5, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one (1) or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development. At the request of the Architectural Review Committee the Association Board is authorized and empowered to execute and Record a notice of any variance granted pursuant to this Section in a form acceptable to the County Recorder's Office.

8.19 Compliance With Governmental Requirements. The application to the Architectural Review Committee, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on Declarant, Association, Board, the Architectural Review Committee, or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.

ARTICLE 9 EASEMENTS

9.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements specified in Article 3, there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and the Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this Article.

9.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of: (i) electric, telephone, telecommunications, water, gas, and sanitary sewer lines, meters, and facilities; (ii) fiberoptic lines, cable lines and facilities; (iii) drainage facilities; (iv) walkways; and (v) landscaping, as shown on the Subdivision Map, and as may be hereafter required or convenient to service the Development,

are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area and Association Maintenance Area except for those installations maintained by utility companies, public, private, or municipal.

9.3 Easements Granted by Board.

(a) Non-Exclusive Easements. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of: (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, telecommunications, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot.

(b) Exclusive Use Common Area Easements. Subject to the restrictions imposed by California Civil Code Section 4600, the Board shall have the authority to execute and Record a maintenance agreement designating portions of the Common Area as “exclusive use common area”, for the benefit of an appurtenant Lot, for the purpose of promoting an efficient division of the use and maintenance responsibilities between the Owners and the Association. A maintenance agreement may be made with any Owner of adjacent property, including Declarant.

9.4 General Association Easements for Maintenance, Repair and Replacement. The Association shall have a non-exclusive easement in, on, over or under every Lot as reasonably necessary to: (i) maintain and repair the Common Area and Association Maintenance Area; (ii) perform front yard landscaping maintenance pursuant to subsection 7.1(g); (iii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 7.4 and Section 7.6; and (iv) otherwise perform its obligations under this Declaration.

9.5 Sideyard Maintenance Easements. In order to permit each Lot’s Owner to have sufficient access for the maintenance, repair, and reconstruction of a Residence or the fence, the Owner of each Lot within the Development shall have reciprocal non-exclusive ingress and egress easements and rights of use of the sideyard between the adjacent Lots’ Residences and the Lots’ common boundaries. An Owner’s right of use pursuant to this Section 9.5 shall be irrevocable, and no Owner or Resident shall install any Improvement or take any action which impedes the adjacent Lot’s Owners or Residents from utilizing the sideyard area pursuant to this Section. The Association shall also have a non-exclusive easement and right of access to inspect for compliance with, and to enforce the provisions of, this Section. Such entry pursuant to this Section shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

9.6 Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections or electricity, gas or telephone, television lines or drainage facilities are installed within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Lots or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. Wherever sanitary sewer house connections and/or water Residence connections or electricity, gas or telephone lines or drainage facilities are installed within the Development, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Lot for uncovering any such lines. Any Owner or utility company exercising the rights granted in this Section shall be obligated to restore the Lot and the Residence entered to substantially its former condition.

9.7 Encroachment Easements. The Common Area and Association Maintenance Area and each Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other similar cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist. Notwithstanding the preceding, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the wilful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area and Association Maintenance Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

9.8 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

ARTICLE 10 ENFORCEMENT

10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute 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 or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, 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.

10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

10.5 Rights and Remedies of the Association.

(a) Rights Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole.

(b) Member Not In Good Standing. Upon a determination by the Board, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

(c) Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, contractors, guests, pets or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area, except for ingress and egress to the Owner's Lot. Except as provided in Section 10.7, below, imposition of sanctions shall be effective only after the Board has held a hearing as provided in California Civil Code Section 5855(c). The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any

costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner, members of such Owner's household, or his or her tenants, contractors, guests, pets or invitees.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board, or by any Owner or by their respective successors in interest.

(e) Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development; (ii) a traffic or fire hazard; or (iii) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective action. Hearings with respect to such corrective action shall be held following the corrective action in accordance with California Civil Code Section 5855, and no disciplinary action may be taken without compliance with California Civil Code Section 5855(c).

10.8 Alternative Dispute Resolution. California Civil Code Section 5900 et seq. shall be complied with respect to any dispute subject to such Sections.

10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices. Any notices required or given under this Article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

10.11 Costs and Attorneys' Fees. In the event any action is taken to enforce any of the provisions of the Governing Documents, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

10.12 Owner Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her tenants, guests or invitees, to: (i) indemnify each and every other Owner for; (ii) to hold each and every other Owner harmless from; and (iii) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

10.13 City Enforcement Right. The City shall have the right, but not the obligation, to enforce any violations of the Declaration, applicable City regulations, ordinances, or conditions of approval imposed upon the Development pursuant to the approval of the Subdivision Map. Any charge or expense incurred by the City in utilizing its enforcement rights pursuant to this section shall be a charge payable by the Association within thirty (30) days following notice by the City of such expenses and a request for reimbursement.

10.14 No Obligation to Enforce. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

ARTICLE 11 INSURANCE

11.1 Types of Insurance Coverage. The Association shall, at the discretion of the Board, purchase, obtain and maintain the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a) Property Insurance. The Association shall obtain and maintain a master or blanket policy of property insurance, written on all risk, replacement cost basis, on all Common Area, and all Improvements within the Development for which the Association has an obligation to maintain or insure. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall 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 Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 11.4, below.

(b) General Liability Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive general liability insurance naming as parties insured the Association, each Director, 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 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 shall 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 shall 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 common interest development projects similar in construction, location, facilities, and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its Directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase 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 subsection, demolition, flood, earthquake, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than three (3) months operating expenses and one hundred percent (100%) of the Association's reserves and shall contain an endorsement of any person who may serve without compensation. The Association's fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the Association's fidelity coverage shall additionally include dishonest acts by that person or entity and its employees. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

(e) Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 11.1 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

11.2 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

11.3 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of property insurance insuring the Owner's Lot, Residence, any Improvements to the Owner's Lot, and personal property. An Owner's individual insurance coverage shall be at least equal to an "HO-3" homeowners' policy.

11.4 Trustee. All insurance proceeds payable under Section 11.1, above, and subject to the rights of Mortgagees under Article 13, below, may, in the discretion of the Board, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or financial institution in the County that agrees in writing to accept such trust.

11.5 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1, above. 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.

ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

12.1 Damage to or Destruction of Association Maintained Improvements. In the event of damage to or destruction of any Improvement to the Common Area and Association Maintenance Area or to any other real property owned by the Association, the Board shall, in its discretion and based upon considerations such as the existence of insurance proceeds from insurance coverage for such damage or destruction and the frequency of use of the Improvement, determine whether to repair or replace the damaged or destroyed Improvement. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the damaged or destroyed Improvement, and if the Board elects to repair or replace the Improvement, the Association may levy a Special Assessment against the Members as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. If the Board elects not to repair or replace the Improvement, the applicable insurance proceeds shall be used in the manner consistent with the purposes of the Association and as determined by the Board.

12.2 Damage to or Destruction of Owner Maintained Improvements. In the event of damage to or destruction of the Improvements on any Lot, the Owner of such Lot shall: (i) completely repair or rebuild the Improvements to the same state as they existed prior to such damage or destruction or in any other manner approved by the Architectural Review Committee in accordance with Article 8 of this Declaration; or (ii) completely remove all remaining portions of

such damaged or destroyed Improvements. Such repair, rebuilding, or removal shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and shall be completed within one (1) year after the date of commencement unless a longer period is agreed to in writing by the Board.

12.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement among the condemning authority, the Association and each of the affected Owners, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

12.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a Residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemnor obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a Residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

12.5 Appraisals. Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser selected in the discretion of the Board.

ARTICLE 13 PROTECTION OF MORTGAGEES

13.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded prior to the Recording of such amendment.

13.2 Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (i) giving written notice to the defaulting Owner; (ii) Recording a notice of default in accordance with California Civil Code Section 2924; and (iii) delivering a copy of such Recorded notice of default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

13.3 Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. Declarant, Owners, and the Association and their successors and assigns, shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens,

charges and equitable servitudes provided for in this Declaration with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

13.4 Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Association Records. Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Financial Statements. Require the Association to provide an audited statement for the preceding fiscal year; and

(c) Notice of Meetings. Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

13.5 Declaration to Conform With Mortgage Requirements. It is the intent of this Article that the Governing Documents and the development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by Freddie Mac, Fannie Mae, or the Veterans' Administration. The provisions of this Article may be amended solely by the vote of the Board in order to conform to any requirements of the secondary lender market.

ARTICLE 14 ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS

14.1 Annexation of Subsequent Phase Property. Declarant shall have the right to annex all or any portions of the Subsequent Phase Property to the Development so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Lots within the annexing Phase. Such annexation shall not require the approval of either the Association or the Owners.

14.2 Annexation of Other Property. Real property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of: (i) the property owner; (ii) Members entitled to exercise not less than two-thirds of the voting power of each class of membership of the Association; and (iii) the Board. After the Class B membership has ceased, the approval of the Members required by this Section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining the requisite approval of the Members pursuant to this Section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 14.4, below.

14.3 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Lots and Common Area, if any, within the annexing property, and shall be signed by the owner of the annexing property and, in cases where membership and Board approval are required, shall include a certificate, signed by any two (2) officers of the Association attesting to the fact that the required Member and Board approval has been obtained.

A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

14.4 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the Development or any annexing property, upon the written consent of the Owners. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

14.5 Commitment Concerning Reserve Contributions Relating to Rental Programs. If Residences in an annexing Phase have been used and occupied under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of escrow for the first sale of a Lot in the annexing Phase, Declarant shall provide a written commitment to pay to the Association, concurrently with the close of escrow for the first sale of a Lot in the annexing Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area in the annexing Phase necessitated by or arising out of such use and occupancy.

ARTICLE 15 DECLARANT'S DEVELOPMENT RIGHT

15.1 Declarant's Right to Develop the Development. The Association and Owners shall not do anything to interfere with the right of Declarant to subdivide, sell, or rent any portion of the Development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of Development or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Lot or any portion of the Development is owned by Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the City or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Development such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

15.2 Use of Common Area by Declarant. Declarant may enter upon the Common Area and Association Maintenance Area to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area and Association Maintenance Area. Declarant shall also have the right of nonexclusive use of the Common Area and Association Maintenance Area without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the 90th day following issuance of a certificate of occupancy on the last Lot within the Overall Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the

Common Area and Association Maintenance Area that are damaged or cluttered in connection with such activities) shall be borne solely by Declarant and any other sponsor of the activity or event. The rights reserved to Declarant by this Section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant.

15.3 Amendment of Development Plans. Declarant may amend its plans for the Development and apply for changes in zoning, use and use permits, for any property within the Development.

15.4 Independent Design Review. For so long as Declarant has the right to appoint any members of the Architectural Review Committee, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association, after having a reasonable opportunity to do so, does not initiate enforcement action.

15.5 Disclaimer of Declarant's Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a Recorded instrument with the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development may or will be carried out, or that any land now controlled or owned or hereafter controlled or acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

15.6 No Amendment or Repeal. So long as Declarant owns any portion of the Overall Development, the provisions of this Article may not be amended or repealed without the consent of Declarant.

ARTICLE 16

AMENDMENT

16.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within Phase 1 to a purchaser other than Declarant, and subject to the City approval requirements of subsection 16.2(c), below, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

16.2 Amendment After First Conveyance. After the conveyance of the first Lot within Phase 1 to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Except as provided in this Section, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an Absolute Majority, including the holders of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) an Absolute Majority of the Association; and (ii) the vote of a

majority of the Total Voting Power held by Members other than Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as Declarant owns a Lot within the Overall Development the provisions of Articles 15 and 16 may not be amended without the prior written consent of Declarant.

(c) Additional Approvals by City for Amendments to Particular Provisions. The provisions of 2.13, 10.13, 16.1, this subsection 16.2(c), and 17.1, and any other provision of this Declaration which relates to a City condition of approval for the Subdivision Map, may not be amended without the prior written consent of the City.

(d) Right of Amendment if Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot. Any such amendment shall be effectuated by the Recordation, by Declarant or the Association, of a certificate of amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant or the Board, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when Recorded, shall be binding upon all of the Lots and Common Area and Association Maintenance Area comprising the Development and all persons having any interest therein.

(e) Right of Amendment if Requested by City. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the City to reflect a modification of the development permits which requires a conforming amendment to this Declaration. The Association shall Record any amendment requested by the City within sixty (60) days of receipt of a request from the City. Any such amendment shall be effectuated by the Recordation of a certificate of amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, with their signatures acknowledged, specifying the City requested the amendment and setting forth the amendatory language requested by the City. Recordation of such a amendment shall be deemed conclusive proof of the City's request for such an amendment, and such amendment, when Recorded, shall be binding upon all of the real property comprising the Development and all persons having an interest therein.

(f) Right of Amendment by Board. The Board may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with a change in applicable federal, state or local legislation, and to correct typographical errors.

16.3 Restatements. This Section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Members, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all real property subject to the Declaration as established by the Declaration's initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in Article 15 once Declarant no longer owns any portion of the Overall Development; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this Section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

16.4 Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with Section 2800 of the Commissioner's Regulations, or if a successor regulation is adopted this provision shall be automatically amended in the same manner, so long as the Development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

16.5 Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by any two (2) officers of the Association setting forth in full the amendment so approved and that the approval requirements of this Article have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

16.6 Reliance on Amendment. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE 17 GENERAL PROVISIONS

17.1 Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners and the City and Recorded in accordance with Article 16, above.

17.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

17.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

17.4 Statutory References. Any reference to a California or federal statute, code or regulation shall also incorporate and include any successor statutes or laws.

ARTICLE 18 SENIOR HOUSING

18.1 Qualification as Senior Citizen Housing Development. The Development is a senior housing development that is intended to: (i) qualify for the "housing for older persons" exemption from the prohibitions on discrimination based on familial status contained in the federal Fair Housing Act, including those provision adopted pursuant to the Fair Housing Amendments Act of 1988 and the Housing for Older persons Act of 1995 (the "Federal Act"); (ii) qualify as a "senior citizen housing development" as that term is defined in California Civil Code Section 51.3 (the "State Act"); and (iii) otherwise comply with the requirements of the Federal Act and the State Act. In accordance with this intention, the provisions, requirements, and restrictions of this Article 18 shall apply.

18.2 Occupancy by Qualifying Resident. Except as specifically otherwise provided in Section 18.3(a) through 18.3(c), each Lot, if occupied, must be occupied by at least one (1) Qualifying Resident and all other persons occupying a Lot must be Qualified Permanent Residents.

18.3 Exceptions to Requirements for Occupancy by Qualifying Resident. As an exception to the provisions of Section 18.3(b) above, the persons described in this Section 18.3 may occupy a Residence subject to the specific restrictions contained in this section:

(a) Permitted Health Care Resident. A Permitted Health Care Resident may occupy a Lot during any period that the Permitted Health Care Resident is actually providing live-in, long-term, or hospice health care to a Qualifying Resident for compensation.

(b) Guest of Qualifying Resident. A person under forty-five (45) years of age may occupy a Lot providing that he or she is a guest of the Qualifying Resident or a Qualified Permanent Resident and further provided the occupancy of any one such guest may not exceed a maximum of sixty (60) days in any year.

(c) Occupancy by Qualifying Permanent Resident. Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the Qualifying Resident, any Qualified Permanent Resident shall be entitled to continue his or her occupancy of the Lot provided that the Board determines that such continued occupancy shall not result in less than eighty percent (80%) of the Lots being occupied by at least one Qualifying Resident as required by the Federal Act.

18.4 Adoption of Verification Policies and Procedures. In compliance with the Federal Act, the Association shall publish and adhere to policies and procedures which demonstrate that the Development is intended and operated for occupancy by Qualifying Residents. The Association shall also comply with the federal rules and regulation for verification of occupancy adopted pursuant to the Federal Act.

18.5 Amendments to Conform to Housing Statutes. In accordance with the provisions of Section 16.2(g), if the Federal Act or the State Act, or any rules or regulations adopted thereunder, are amended or repealed, the Board shall have the power to modify this Article 18 as necessary, and without the necessity of obtaining the approval of the Members, to bring it into conformity with any such amendment in order to preserve the Development's status as a senior citizen housing development.

18.6 Age Restricted Owners and Non Age Restricted Owners. Owners acknowledge that the Development is subject to the provisions of Article 18 and are subject to the following:

(a) Percentage of Senior Citizen Residences. Owners acknowledge that the Development shall contain eighty percent (80%) senior citizen Residences and twenty percent (20%) non senior citizen Residences.

(b) Interspersed Residences. Owners acknowledge that the Development shall provide Residences that are designated as non senior citizen Residences and may be located adjacent to, next door to, and across the street from senior citizen Residences and that non senior citizen and senior citizen Residences may be interspersed within the overall Development.

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DATED: _____, 20__.

DECLARANT:

BRETTON WOODS, LLC,
a California limited liability company

By: _____

Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

PHASE 1

All of the real property located in the City of Davis, County of Yolo, State of California, which is more particularly described as follows:

Lots 70 through 80 , inclusive, and Common Area **Lots OR**
Parcels F, G, and Z, inclusive, as shown on the Subdivision Map entitled,
"Subdivision Map No. 5165 Bretton Woods", filed for Record on ,
20 , in Book of Maps, at Page , of the Official Records of Yolo
County.

DRAFT

EXHIBIT "B"

LEGAL DESCRIPTION OF THE SUBSEQUENT PHASE PROPERTY

All of the real property located in the City of Davis, County of Yolo, State of California, which is more particularly described as follows:

Lots _____ and Remainder, as shown on the Subdivision Map entitled, "Subdivision Map No. 5165 Bretton Woods" a Large Lot Subdivision, filed for Record on _____, 20____, in Book _____ of Maps, at Page _____, of the Official Records of Yolo County.

Excepting therefrom Lots ~~_____~~ 70 through ~~_____~~ 80, inclusive, and Common Area ~~†Lots _____~~ OR Parcels F, G and Z, inclusive, as shown on the Subdivision Map entitled, "Subdivision Map No. 5165 Bretton Woods" a Large Lot Subdivision, filed for Record on _____, 20____, in Book _____ of Maps, at Page _____, of the Official Records of Yolo County.

DRAFT