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**DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**COTTONWOOD PARK**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, victims of abuse status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COTTONWOOD PARK**

This Declaration of Covenants, Conditions and Restrictions for Cottonwood Park (the "Declaration") is made by DLLM, L.P., a California limited partnership (the "Declarant").

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**RECITALS**

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A. Declarant is the owner of certain real property located in the City of Placerville, County of El Dorado, California, which is more particularly described as follows:

Lots 1 through 39, inclusive, as shown on the Subdivision Map entitled "Cottonwood Park, Phase 4", Filed for Record on \_\_\_\_\_, 202\_, in Book \_\_\_\_\_ of Maps, at Page \_\_\_\_\_, El Dorado County Records.

B. Declarant has deemed it desirable to impose a general plan for the improvement and development of all of the Lots located within the Development through the creation of certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, and charges all running with the Development as hereinafter set forth.

C. Declarant hereby declares that all of the Development shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, covenants, conditions, and equitable servitudes, all of which are imposed for the attractiveness and desirability of the Development in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Development, or any portion thereof.

D. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein are covenants running with the land pursuant to California Civil Code Section 1468 and shall be binding upon all persons having any right, title, or interest in any portion of the Development, and may be enforced by Declarant, the Association or by any Owner. **The Development is not a common interest development as defined by California Civil Code Section 4100, and is not subject to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 et seq.).**

E. The Development consists of thirty-nine (39) Lots. This Declaration establishes a property owners association (the "Association"), of which the Owners of each Lot is a Member. The Association shall, among other things, maintain, repair and replace the "Emergency Vehicle Access Easement", **the retaining walls throughout the Development**, and the drainage system throughout the Development, including, but not limited to, the detention basin within Lot 28, all as shown on the Subdivision Map.

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**ARTICLE 1                      DEFINITIONS**

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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 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.

1.3 Architectural Review Committee. "Architectural Review Committee" shall mean the committee created pursuant to Article 8 of this Declaration.

1.4 Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board of Directors pursuant to Section 8.5 of this Declaration.

1.5 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.

1.6 Association. "Association" shall mean the Cottonwood Park Community Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.7 Association Maintenance Area. "Association Maintenance Area" shall mean the "Emergency Vehicle Access Easement" within Lot 11, ~~the retaining walls throughout the Development,~~ and the drainage system throughout the Development, including, but not limited to, the detention basin within Lot 28, all as shown on the Subdivision Map.

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

1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they may be adopted by the Members and any duly-adopted amendments thereof. Unless the Members adopt a separate set of Bylaws, the provisions of Article 2, below, shall constitute the Association's Bylaws.

1.10 City. "City" shall mean the City of Placerville, located in El Dorado County, California, and its various departments, divisions, employees and representatives.

1.11 County. "County" shall mean El Dorado County, California, and its various departments, divisions, employees and representatives.

1.12 Declarant. "Declarant" shall mean DLLM, L.P., a California limited partnership. 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.

1.13 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time.

1.14 Development. "Development" means the real property described in Recital A, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto; together with any real property annexed to this Declaration pursuant to a Declaration of Annexation.

1.15 Director. "Director" shall mean a member of the Board.

1.16 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.

1.17 Improvement. "Improvement" shall mean all structures and improvements including without limitation Residences, buildings, landscaping, paving, fences, and signs.

1.18 Lot. "Lot" shall mean any plot of land shown upon the Subdivision Map.

1.19 Member. "Member" shall mean an Owner, and refer to membership in the Association.

1.20 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.

1.21 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.

1.22 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.

1.23 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.24 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.

1.25 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.

1.26 Subdivision Map. "Subdivision Map" shall mean the final subdivision map Filed with the County Recorder for any portion of the Development.

## **ARTICLE 2                    HOMEOWNERS ASSOCIATION**

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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. The Association is not subject to the Davis-Stirling Common Interest Development Act (California Civil Code Section 4000 et seq.), even though numerous Governing Document provisions impose the same obligations as required by the Act.

### 2.2 Association Membership.

(a) Ownership Includes Membership. Every Owner of a Lot shall be a Member 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.

(b) Membership Meeting Notice. The annual meeting of the Members shall be held annually at a date and time established by the Board. Special meetings of the Members may be called at any time by the President or by the Board or pursuant to the written request of Members entitled to cast at least five percent (5%) of the total voting power of the membership. Written notice of annual and special membership meetings shall be mailed first class, postage prepaid, or otherwise delivered at least ten (10) but not more than ninety (90) days before such meeting, to each Member entitled to vote at such meeting, except that in the case of a special meeting called pursuant to a written request of Members, notice of such special meeting shall be mailed or otherwise delivered within twenty (20) days after receipt of such written request by the Board, and the date of such special meeting shall be set by the Board and shall be not sooner than thirty-five (35) days nor later than ninety (90) days after the date of the Board's receipt of such written request. Notice of meetings shall be addressed or otherwise delivered to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice of any meeting of Members shall specify the date, hour, and place of the meeting, and the general nature of those matters which the Board intends to present for action by the Members.

(c) Membership Meeting Quorum. The presence at any meeting, in person or by proxy, of Members entitled to cast at least a majority of the total voting power of the membership shall constitute a quorum for the transaction of any business. If, however, such quorum shall not be present or represented at any meeting, the Members otherwise entitled to vote at that meeting may not transact any business but may adjourn the meeting from time to time, to be reconvened at a subsequent date which is not less than five (5) days and not more than thirty (30) days from the time of the adjourned meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At all meetings of the Members, each Member may vote in person or by proxy.

2.3 Classes of Membership. The Association shall have the following classes of membership:

(a) Class A Members. Each Owner, with the exception of Declarant, shall be a Class A Member of the Association. If a Lot is owned by more than one (1) person, there shall be only one (1) vote with respect to such Lot. Declarant shall become a Class A Member upon the occurrence of the events specified in subsection 2.4(c), below.

(b) Class B Members. The Class B Member shall be Declarant until the occurrence of the events specified in subsection 2.4(c), below.

#### 2.4 Voting Rights of Classes of Members.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall not vest until Assessments against those Lots have been levied by the Association.

(b) Class A Members. Class A Members shall have one (1) vote for each Lot that the Member owns. A Class A Member who has sold his or her property to a purchaser under an installment land contract shall be deemed to have delegated to such purchaser his or her membership rights in the Association. However, the selling Owner shall remain liable for any default in the payment of Assessments by the purchaser until title to the property sold shall be transferred to the purchaser.

(c) Class B Members. The Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership when ninety percent (90%) of the Lots within the Development have been conveyed to Class A Members.

(d) Members Entitled to Vote. Only Members in Good Standing shall be entitled to vote. The tenants or lessees of any Lot within the Development shall have no voting or membership rights in the Association.

(e) Suspension of Voting Rights. A Member's voting rights may be temporarily suspended under those circumstances described in Article 10, below.

(f) Consent of Membership Classes. As long as there are Class A and Class B memberships within the Association, no action by the Association that must have the prior approval of the Members shall be deemed approved by the Members unless approved by the appropriate percentage of both classes of Members. Whenever any provision of this Declaration or any other Governing Document of the Association requires the approval of a prescribed majority of the voting power of the Members "other than Declarant", the intent of the quoted phrase is that the action be approved by the vote or written assent of a bare majority of the Class B voting power, as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant. After all the Class B memberships have been converted into Class A memberships, any such provisions shall be deemed to require the vote or written assent of a bare majority of the total voting power of the Association, as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant.

2.5 Board. The affairs of the Association shall be managed by or under the direction of the Board.

(a) Purpose and Function of the Board. The purpose of the Board is to manage and oversee the maintenance obligations prescribed in this Declaration, and establishing, enforcing, and collecting Assessments for such maintenance obligations.

(b) Authorized Number of Board Members. The affairs of this Association shall be managed by or under the direction of the Board. The initial Board shall be comprised of three (3) persons designated by Declarant, and shall hold office until the first meeting of the membership. Thereafter, the Board shall consist of three (3) Directors. No reduction in the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

(c) Election of Board Members. Except as noted herein, each elected Director shall hold office for a term of two (2) years and until a successor Director has been elected or until the earlier disqualification, death, resignation, or removal of such Director. Any tie in the number of votes cast for candidates shall be decided by random drawing or other method of chance as determined by the Board. There shall be no limitation on the number of consecutive terms to which a Director can be re-elected. The first election of the Board shall be conducted at the first annual meeting of the Members and the terms of office shall be staggered as follows: One (1) Director shall be elected by the votes of Class A Members only, as more particularly described in subsection 2.5(d), below. This initial one (1) elected Director shall serve a term of one (1) year. In addition to the election of the one (1) Director, Declarant shall appoint two (2) Directors pursuant to Declarant's Class B voting rights. The two (2) Directors initially appointed by Declarant at the first annual meeting shall serve a term of two (2) years. Thereafter, term of office of a Director shall be two (2) years.

(d) Special Rule for Election of Director by Class A Members . From the first election of the Board and thereafter for so long as the majority of the voting power of the Association resides with Declarant, or so long as there are Class B memberships in the Association, not less than twenty percent (20%) of the Board shall be elected solely by the votes of Owners of Lots other than Declarant (i.e. the Class A Members only).

(e) Compensation. No member of the Board shall be compensated for being on the Board. However, upon approval by the Board, any Director may be reimbursed for his or her expenses actually incurred in the performance of his or her duties.

(f) Board Vacancy. Any vacancy occurring on the Board, except a vacancy created by the removal of a Director by Declarant or by the Members or due to an increase in the authorized number of Directors, may be filled by approval of the Board, or if the number of Directors then in office is less than a quorum, by the vote of a majority of the remaining Directors at a meeting of the Board, or by unanimous written consent of the Directors then in office, or by a sole remaining Director. A Director so chosen shall serve the remainder of the term of office of the Director whom he or she replaces. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. If the Board accepts the resignation of a Director tendered to take effect at a future time, the Board or, if the Board fails to act, the Members may elect a successor to take office when the resignation becomes effective.

(g) Board Meetings. The Board shall meet at least quarterly at a place within the County. Regular and special meetings of the Board shall be open to all Members of the Association, except when the Board meets in executive session meetings as permitted by the California Corporations Code. A reasonable time limit for all Members to speak to the Board shall be established by the Board. Except for emergency meetings affecting the safety of Members and executive sessions for matters which by law are reserved for executive session, Members shall be given notice of the day, time, and place of each meeting of the Board, whether regular or special, at least four (4) days prior to such meeting. Notice shall be given to all Members by posting the notice in a prominent place or places within the Development by mail to any Owner who has requested notification of Board meetings by mail, at the address requested by the Owner.

(h) Election of Officers. The Board shall elect the officers. The election of officers shall take place immediately following the election of the Board, or at the first meeting of the Board following each annual meeting of the Members.

2.6 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 Association Maintenance 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.

2.7 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 this Declaration and in any Bylaws adopted by the Members.

2.8 Capital Improvements. The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Association Maintenance 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 Association Maintenance Area; (ii) voluntary significant upgrade to Association Maintenance Area materials; or (iii) discretionary material alterations to the appearance of the Development.

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

2.10 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 consent of all Members, the City, and the fire department having jurisdiction over the Development must be obtained for the Association to: (i) transfer all or substantially all of its assets; or (ii) file a certificate of dissolution.

2.11 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 Governing Documents, 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.

## **ARTICLE 3                    ASSOCIATION MAINTENANCE AREA**

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3.1     Purpose of Association Maintenance Area. Subject to the provisions of the Declaration, the Association Maintenance Area shall be held, maintained, and used in accordance with all City requirements for the benefit of the Owners, the members of the Owners' households, tenants, invitees and guests, as provided in the Governing Documents.

3.2     Acceptance of Association Maintenance Area. The Association shall be deemed to have accepted the Association Maintenance Area for maintenance when assessments have commenced.

## **ARTICLE 4                    USE RESTRICTIONS**

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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 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 Residence or Lot.

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

4.3     Restriction on Businesses. No Lot, or any portion thereof, shall be occupied or used for other than residential purposes. 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.

        (b)     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 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, or stored 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.

4.5     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 visible from the roadway are subject to approval of the Architectural Review Committee.

4.6     Sports Apparatus. The Board may establish Rules and Architectural Guidelines regarding the permissibility of and placement, maintenance and use of any temporary or fixed sports apparatus located

within a Lot. No sports apparatus shall be installed on a Lot or the exterior of a Residence without the prior approval of the Architectural Review Committee in accordance with Article 8, below.

4.7 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Residences and garages. 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.

4.8 Signs. All signs shall be in compliance with the City ordinance and any Rules adopted by the Board.

4.9 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) Not Visible from Streets. All Permitted Dishes shall be placed in locations which are not visible from the public or private streets within the Development, where possible.

(b) 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.

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

(d) 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 Architectural Review Committee.

4.10 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, 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 the garage of the Owner's Residence.

(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 4.10(a) after collection. Solid Waste may require parking restrictions on the collection day if staff deems it necessary in order to provide safe and reliable service. There must be sufficient space so that there is at least three feet (3') between containers and any other obstacles (i.e. utility poles, above-ground utility boxes, etc.). 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.

(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.

4.11 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: (i) such emergency repairs as are necessary to remove the vehicle from the Development; or (ii) within an enclosed garage.

(d) Parking of Vehicles by Residents.

(i) Garage and Driveway Parking. Vehicles of Residents may only be parked wholly within the garage located on such Owner's Lot, or within the driveway serving the Residence's.

(ii) No Street or Roadway Parking. Owners, guests, tenants and invitees shall not park vehicles within the streets or roadways marked, designated and/or painted as "No Parking" areas.

(e) Visitor Parking Areas. An Owner's guests and invitees may park vehicles in the Owner's garage or on the Owner's driveway. Vehicles of guests and invitees may be parked within the roadway subject to any restrictions imposed by the City for emergency vehicle access and fire-lane access. Visitors shall not park vehicles within the roadway marked, designated and/or painted as "No Parking" areas.

(f) Fire Lane Towing. Any vehicle parked within a fire department designated fire lane shall be subject to immediate towing. The Association and each Owner shall immediately authorize the towing of any unauthorized vehicle parked within a designated fire lane.

(g) 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, invitees, tenants 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, invitees, or guests are responsible for the presence of such vehicle; and

(ii) Parking Fines. The power and authority to fix and impose fines for violations of this Section.

#### 4.12 Garages.

(a) Storage. Each Owner shall keep his or her garage in a neat, orderly, sanitary, and safe condition, and shall be available for automobile parking at all times. Storage within a garage shall be incidental to automobile parking.

(b) No Remodeling. No garage shall be remodeled or used as a workshop, storage space, hobby facility, kitchen, or for any other use or facility which would interfere with the ability of the Resident of the Lot to accommodate the number of full-sized passenger vehicles which the garage would normally be, or was originally, designed to accommodate. In no event shall any garage be converted to or used as a living area.

4.13 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.

#### 4.14 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 (except for dog breeds described below) 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. Except for legally designated service animals, no Pit Bulls, Chow Chows, Perro de Presa Canarios, Rottweiler, Doberman Pinchers, or any mixed breed containing one of the above-referenced breeds are permitted within the Development at any time. 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 Association Maintenance 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.

4.15 Rental of Lots. An Owner shall have the right to rent his or her Residence subject to the provisions of this Declaration, 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 Association Maintenance 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 Residence 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) Requirement of Inclusive Rental Agreement. No Owner may rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Residence on the Lot.

4.16 Clotheslines and Sideyard Storage. 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 that is visible from the public or private streets.

4.17 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.

4.18 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.

4.19 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 4.19(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 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.

4.20 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.

4.21 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 Determination by Board. 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 meet the requirement, 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 meet the requirement, 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 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 approval as described in Article 8, below.

5.2 Solar Systems. Subject to limitations imposed by California law, the Board shall be entitled to adopt, as part of the Architectural Rules, 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 and the streets and roadways.

5.3 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 as established in connection with the approval of the final Subdivision Map applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the City.

5.4 Photovoltaic Reception. By acceptance of a deed, all Owners agree not to allow any landscaping, including trees, to interfere with the reception of any photovoltaic systems located within the Development.

5.5 Exterior Lighting and Fixtures. All exterior light fixtures must be approved by the City. Spotlights, floodlights, reflectors, or other types of exterior lighting may be used to illuminate buildings, patios, and landscaped areas on Lots, so long as such lighting is focused and equipped with lenses or other devices so that the illumination is screened and/or directed away from adjacent properties.

5.6 Construction Activities. All construction related to development on the Development site shall be limited to the hours between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 7:00 a.m. and 5:00 p.m. on Saturday. No construction shall be allowed on Sunday unless in an emergency and with written permission from the City.

5.7 No Future Development of Open Space Areas. Any open spaces designated on a Lot shall be restricted to no future development.

5.8 Pumping System Design Approval. Owners shall obtain, along with their dwelling Building Permit, a design approval from the Engineering Public Works Department of on-site pumping systems.

5.9 Propane Service. Propane service shall be supplied by individual storage tanks on the Owner's Lot if so elected.

5.10 Annual Assessment for Benefit Assessment District. All Lots in the Development are subject to annual payment of the Benefit Assessment District No. 13-01 ("District 13-01") assessment for street facilities maintenance, drainage replacement and drainage facility maintenance, and park maintenance. District 13-01's budget for each fiscal year will be based upon the annual costs provided for in the awarded

contract for these services. This means assessments can fluctuate from year to year as contracts expire and/or if additional properties are annexed into District 13-01. This assessment will appear on the Lot Owner's yearly property tax bill. Declarant shall inform potential buyers of the assessment amount.

5.11 Architectural Design. The architectural design of the Residences within the Development shall consist of the following:

(a) Minimum Square Footage. All Residences shall have a minimum area of One Thousand (1,000) square feet (excluding garages, carports, accessory buildings, covered and uncovered patio and porches). This subsection 5.6(a) shall not be applicable to any "guest house" for the entertainment of social guests, nor servants' quarters or other employees employed upon the premises of a Lot;

(b) Enclosed Parking Spaces. All Lots shall have a minimum of two (2) enclosed parking spaces;

(c) Exterior Trim Color. All exterior trim color shall conform to the color scheme initially established by Declarant and the Architectural Review Committee;

(d) Roof Pitch. Roof pitch shall be a minimum of five inches (5") for every twelve inches (12") run;

(e) Roof Covering. Roof covering shall be a minimum of dimensional architectural grade composition roof shingles, tile, or comparable material, subject to approval by the Architectural Review Committee;

(f) Fences. Fences shall be of a "good neighbor" design and shall not exceed six feet (6') in height unless approved by the Architectural Review Committee. Plans shall be included with architectural drawings for review by the Architectural Review Committee. The fences shall not extend any closer to the street than the front of the main Residence on one side and the front of the garage on the other; and

(g) Front Yard Landscaping. A front yard landscaping plan shall be submitted by Lot Owners for Architectural Review Committee review and approval prior to the construction of any Residence and shall include the use of native plant species.

5.12 Energy Efficient Housing. All Residences shall include a solar system.

5.13 Placerville Airport.

#### NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

5.14 Notice of Right to Farm. The Development is located within one (1) mile of a farm or ranch land designated on the current County-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and

necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground and aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

## **ARTICLE 6                      ASSESSMENTS AND LIENS**

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### **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. 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. Any reference in the Governing Documents to the right of the Association to utilize the power of foreclose with respect to any Association lien, shall only refer to a judicial action and shall specifically not include any form of non-judicial foreclosure rights set forth in California Civil Code 5700 et seq.

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 Association Maintenance 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, the Board shall complete and distribute to all Owners an estimate of the net funds 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 within the Development as "Regular Assessments" as further provided in this Section 6.5.

(b) Allocation of Regular Assessment. 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 Regular Assessment.

(c) 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.

(d) Increases in Regular Assessment. The Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners. The limitation imposed upon the Board pursuant to this Section 6.5(d) shall not apply to any increase in Regular Assessments required to fund any maintenance, repair, or replacement of any Improvement subject to Section 7.1(b) or (c), below.

(e) 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 prorated, if necessary, according to the number of months remaining in the fiscal year established by the Association.

(f) Partial Assessment Exemption for Uncompleted Association Maintenance Area. 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 Association Maintenance Area Improvement that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Association Maintenance Area has been Recorded; or (B) the Association Maintenance Area Improvement has been placed in use.

6.6 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. Except in the case of an emergency situation, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Owners.

6.7 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.

6.8 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.

6.9 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.

6.10 Offsets. Except as permitted by subsection 6.5(f), 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, except as provided in this Section, 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. Declarant and the Association may enter into a written agreement which permits Declarant to perform Association maintenance obligations or other services in exchange for an offset in Assessments.

6.11 Delinquent Assessments. Any Assessment payment, including any installment payment, shall become delinquent if payment is not received within fifteen (15) days after its due date. There shall be a late charge of ten percent (10%) or ten dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges

imposed on prior delinquent payments. Interest also shall accrue on any delinquent payment at the highest rate allowed by law. Interest shall commence thirty (30) days after the Assessment becomes due.

6.12 Collection of Assessments.

(a) Liquidated Damages. The Association may enforce delinquent Assessments, including delinquent installments, by suing the Owner directly on the debt established by the Assessment. If the Association successfully sues an Owner for the nonpayment of Assessments, the Board shall be entitled to collect delinquent Assessments, accompanying late charges, penalties, or interest, reasonable attorneys' fees and costs and liquidated damages for the burden and expense of enforcement. Such liquidated damages shall be a sum equal to fifty percent (50%) of the amount of delinquent Assessments owed to the Association by the Owner. Such liquidated damages represent a reasonable sum considering the Association's small size, limited resources, and the significant burden placed on the Board to prosecute its collection efforts, and represents a fair and reasonable estimate of the costs that will be sustained by the Association due to the undertaking of an enforcement action, including administrative and other overhead costs. Each Owner by acceptance of the deed to a Lot each acknowledge that proof of actual damages would be costly and inconvenient.

(b) Owners' Consent to Liens. If an Owner is delinquent more than sixty (60) days in the payment of Assessments, the amount of the Assessments, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed upon the Recordation of a notice of delinquent assessment. The notice of delinquent assessments shall set forth: (i) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article; (ii) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (iii) the name of the Owner of such Lot; and (iv) the name and address of the Association. Upon payment in full of the sums specified in the notice of delinquent assessment, the Board shall Record a further notice stating the satisfaction and release of the lien thereof and a reasonable charge can be imposed for the preparation and recordation of that release. **The lien prescribed by this subsection may only be enforced by judicial action and shall not be enforceable by any form of non-judicial foreclosure or by a power of sale under Civil Code Sections 2924, 2924b, and 2924c.** Each Owner by acceptance of the deed to a Lot consents to the Association the right to Record a lien pursuant to this subsection 6.12(b).

6.13 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall Record, in the same manner as the notice of delinquent assessment, a further certificate stating the satisfaction thereof and the release of the lien.

6.14 Priority. The lien of the Assessments provided for under this article, including interest and costs (including attorneys' fees), shall be prior and superior to: (i) any declaration of homestead Recorded after the Recordation of this Declaration; and (ii) 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.

6.15 Association Funds. All Association accounts shall be maintained in one 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.

6.16 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.

## **ARTICLE 7 IMPROVEMENTS; DISCLOSURES; MAINTENANCE OF PROPERTY**

### 7.1 Association Maintenance Responsibilities.

(a) Association Maintenance Area, Generally. The Association shall maintain, repair and replace the Association Maintenance Area and all facilities, and Improvements thereon, and all other real and personal property that may be acquired or controlled by the Association, keeping such property in good condition and repair. The Association shall be responsible for providing maintenance and drainage easement cleaning services as necessary for the Association Maintenance Area, including all detention ponds, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Association Maintenance Area in good condition and repair. The Board shall have the discretion to determine the nature, extent and level of care to be performed by the Association in discharging its obligations under this Article.

(b) Non-Exclusive List of Association Maintenance Components. The Association's responsibility pursuant to this Section shall include, without limitation, the maintenance, repair and replacement of the following elements within the Development:

(i) Private Storm Drains. The private storm drains and related facilities for the on-site drainage systems as shown on the Subdivision Map;

(ii) Private Detention Basin. The private detention basin located within Lot 28 as shown on the Subdivision Map;

(iii) Emergency Vehicle Access Easement. The "Emergency Vehicle Access Easement" within Lot 11 as shown on the Subdivision Map; and

~~(iv) Retaining Walls. The retaining walls throughout the Development.~~

(c) 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.

(d) Association Inspections. The Association shall adopt an inspection and maintenance manual for the periodic inspection and maintenance of the Association Maintenance Area. Such maintenance inspection may be undertaken by a qualified reserve study analyst as part of the Association reserve study. 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.

7.2 Owners' Responsibilities. Except as specified in Section 7.1, above, 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, including, but not limited to, the exterior light fixtures at the front and rear of the Residences that automatically come on at dusk and turn off at dawn. The garage door for the garage of the Residence shall be maintained in good condition, appearance and repair.

(b) Owner's Responsibility for Consequential Damages to Lot. An Owner is responsible for the cost of repair of those portions of the Owner's Lot, including any fence or wall located on the Owner's Lot, 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 drainage damage to a fence or wall that is caused by an Association-maintained drainage line is the responsibility of the Owner even though the maintenance of the drainage line is the responsibility of the Association.

(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) Landscaping. Each Owner shall maintain the landscaping on his or her Lot in a neat and attractive condition, including, but not limited to, the weekly or bi-weekly mowing of lawns as seasonally appropriate. Each Owner shall utilize a seven-day automatic irrigation system for the landscaping on his or her Lot. Each Owner shall complete the installation of backyard landscaping on his or her Lot within one hundred eighty (180) days of occupancy of the Lot's Residence. An Owner shall have two weeks to remove and replace any dead grass, shrubs, or other landscaping within the Owner's Lot.

(e) Fences. Each Owner shall maintain, repair and replace all fences and party walls in accordance with the following provisions. Each fence and wall placed on the dividing Lot line between two (2) Lots shall constitute a party wall. The provisions of 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.

(i) Sharing of Repair and Maintenance. The cost of maintenance and repair of a fence, party wall or retaining wall shall be equally shared by the Owners who make use of the fence or wall 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.

(ii) Material and Appearance. Replacement fencing shall be of the same material and appearance to match existing fencing, unless agreed to by both owners that share the party wall.

(f) Graffiti. It shall be the responsibility of the Lot Owner to maintain the site free of graffiti. All graffiti shall be removed within seventy-two (72) hours.

7.3 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 7.5, in the event an Owner fails to perform such work within thirty (30) 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.

7.4 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.

7.5 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 or the 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.

7.6 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.

7.7 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.

7.8 Board Discretion. 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.

7.9 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.

7.10 Common Utilities. Common utility lines and connections, including without limitation, water, sewer, storm drains, electrical, cable television, telephone, telecommunication, and gas lines, which are located on, under, or over the streets and roadways, shall be maintained, repaired and replaced by all of the Owners jointly and in equal shares up to the point the line services an individual Residence or by the utility company providing such service.

7.11 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 this Declaration.

## **ARTICLE 8                      ARCHITECTURAL CONTROL**

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8.1 Submission of Plans and Specifications. Except for Improvements made or constructed by or on behalf of the Declarant, no Improvements including without limitation landscaping, 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 as to: (i) quality of workmanship and design; (ii) harmony of external design in relation the nature and character of the Development and the Improvements thereon; and (iii) location in relation to surrounding structures, topography, finished grade elevation. Notwithstanding this Section, 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.

### 8.2 Establishment of Architectural Review Committee.

(a) Initial Declarant Appointments. The Architectural Review Committee shall consist of three (3) members. Declarant may appoint all of the members of the Architectural Review Committee and all replacements until each Lot within the Development is improved with a completed Residence and landscaping.

(b) Board as Committee. Following the completion of all Residences and all initial landscaping within the Development, 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 Section 8.1, 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 Architectural Review Committee 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 Association Maintenance Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard.

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

(a) Application. The Owner has complied with the provisions of Sections 8.6 and 8.7, above, and this Section 8.8;

(b) Compliance with Plans and Specifications Requirements. 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) Compliance with Aesthetics and Design Requirements. 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 quality of 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.

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. 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 regular or special meeting of the Board.

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 paragraph, 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 two (2) years 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 issue 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, him or her. 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. The Committee shall not grant any variance of a requirement in the Association's Governing Document which is imposed pursuant to the Conditions of Approval without the written consent of the City to such proposed variance.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one 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 Association Maintenance 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

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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, water, gas, and sanitary sewer lines, meters, and facilities; (ii) 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 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 non-exclusive easements and rights of way, in, on, over, or under the Development and to the extent necessary, the Association Maintenance 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, public sewers, storm drains and pipes, water systems, sprinkler 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 Maintenance Area Easements. The Board shall have the authority to execute and Record a maintenance agreement designating portions of the Development and the Association Maintenance Area as exclusive use and maintenance areas 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.

9.4 General Association Easements for Maintenance, Repair and Replacement. The Association shall have an easement in, on, over or under every Lot as reasonably necessary to: (i) maintain and repair the Association Maintenance Area; (ii) perform maintenance pursuant to Section 7.1; (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 Sidyard 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 sidyard 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 sidyard 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. 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 Association Maintenance Area and each Lot within the Development is hereby declared to have an easement over all adjoining Lots and the Association Maintenance 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 willful** 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 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**

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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 Legal Principles Applicable to Enforcement. Although the Development is not subject to the Davis-Stirling Common Interest Development Act, in any action to enforce this Declaration or any other Governing Documents, the community and each Owner acknowledges and agrees to be bound by the legal principles and legal presumptions governing common interest developments. Such legal principles and legal presumptions shall include, for example and without limitation, the holdings and precedents of the following cases:

(a) Nahrstedt v. Lakeside Village Condominium Association, (1994) 8 Cal 4<sup>th</sup> 361. (CC&Rs are presumed reasonable; burden is on the party challenging provision to show that provision is unreasonable).

(b) Villa De Las Palmas Homeowners Association v. Terifaj, (2004) 33 Cal 4<sup>th</sup> 73. (Amendments are as valid as the original CC&Rs, and duly adopted Rules are enforceable).

(c) Rancho Santa Fe Association v. Dolan-King (2004) 115 Cal. App. 4<sup>th</sup> 28. (Architectural rules and review by Board is subject to requirements of good faith, and if good faith, the courts won't overrule the Board).

(d) La Jolla Shores Clubdominium Association v. Lamden (1999) 21 Cal 4<sup>th</sup> 249. (Courts won't overrule Board decisions, so long as decisions were made in good faith, in the best interest of the community, and based upon reasonable inquiry).

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 this Declaration, and shall be fully responsible for the conduct, activities, any Declaration violation by any

of them, and for any damage to the Development 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 this Declaration shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by this Declaration through non-use of 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.

(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, tenants, guests, invitees, Contract Purchasers, contractors, or pets, 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, 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 duly noticed hearing. 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, tenants, guests, invitees, contractors, or pets.

(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, 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, or a decision arising out of an arbitration proceeding. 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.

(f) Claims Regarding Defects. The Association's right to maintain an action for alleged construction defects shall be limited to claims involving Association Maintenance Areas only, and the Association shall not have standing to assert claims on behalf of individual Owners with respect to alleged defects to Residences.

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 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.

10.8 Alternative Dispute Resolution. Although not required because the Development is not subject to the Davis-Stirling Common Interest Development Act, the Association and each Owner subject to a dispute related to the Governing Documents shall make a good-faith effort to comply with California Civil Code Section 5900 et seq.

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. Although California Civil Code Section 5930 is not statutorily applicable to the Development, for purposes of awarding attorneys' fees pursuant to this Section 10.11, the court may reduce or deny a party's award of attorneys' fees due to the such party's failure to utilize mediation prior to litigating the dispute.

10.12 Owner Indemnification. Each Owner, by acceptance of his or her deed, agrees 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 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.

10.14 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.

## **ARTICLE 11                      INSURANCE**

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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 policy of property insurance, written on all risk, replacement cost basis, on all Association Maintenance 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 11.5, 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 Association Maintenance 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 One Million Dollars (\$1,000,000.00) 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 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 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.

11.2 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 described in this Article 11. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

11.3 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.

11.4 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of personal liability and property insurance insuring the Owner's Lot, Residence, any Improvements to the Owner's Lot, and personal property.

11.5 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.

11.6 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.

11.7 Governmental Lender Requirements. Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the FANNIE MAE, FREDDIE MAC, FHA, or VA or any successor thereto. If such requirements conflict, the more stringent requirements shall be met. In the event the Board is provided notice that any required insurance policy does not satisfy the minimum requirements imposed by FANNIE MAE, FREDDIE MAC, FHA, or VA or any successor thereto, the Board shall make all reasonable efforts to satisfy such minimum requirements within thirty (30) days of receiving such notice.

11.8 Indemnification by Association. The Association shall indemnify, defend and hold harmless each Owner from any suits, claims, legal proceedings, demands, costs, fees and expenses including those for attorneys' fees, of whatever kind relating to or arising from any use of the easement located on each Owner's Lot, unless the claim is based upon the gross negligence or willful misconduct of the Owner. The claims subject to this Section shall include, without limitation, personal injury or death to any person, or property damage by or to any person, including any Owner, Resident, tenant, guest, or invitee of any Owner.

## **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 portion of the Association Maintenance Area, the Board shall, in its discretion and based upon considerations such as, the duty of an Owner to reimburse the Association for such damage or

destruction as provided herein, or 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 Improvements on Lots. 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 consistent with the requirements of Article 8, above; or (ii) completely remove all remaining portions of such damaged or destroyed Improvements. Such repair, rebuilding, or removal shall be commenced and completed as required by Sections 8.13 and 8.14, above, unless a longer period is agreed to in writing by the Board.

12.3 Condemnation of Association Maintenance Area. If at any time all or any portion of any Association Maintenance 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 Association Maintenance 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**

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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 a financial statement for the preceding fiscal year at no expense to the requesting entity; 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 of Directors in order to conform to any requirements of the secondary lender market.

## **ARTICLE 14                      DECLARANT'S DEVELOPMENT RIGHT**

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14.1 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. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation of Residences and related Improvements may impair the view of such Owner, and hereby consents to such impairment.

14.2 Use of Association Maintenance Area by Declarant. Declarant may enter upon the Development 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 Association Maintenance Area. Declarant shall also have the right of nonexclusive use of the 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 date on which Declarant no longer owns any Lots within the 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 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.

14.3 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.

14.4 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.

14.5 Declarant Exemptions. In order to facilitate the construction of Residences, projects, and other Improvements within the Development, Declarant shall be exempt from the property use restrictions and architectural approval provisions of Articles 4, 5, and 8 of this Declaration.

14.6 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.

14.7 Encumbering Additional Property. The owners of any real property which is not subject to this Declaration when this Declaration is first Recorded may consent to and join this Declaration by executing and recording a "Declaration of Annexation", referencing the Recording information of this Declaration, and titled and containing provisions to permit Recording. The real property subject to the Declaration of Annexation shall be referred to as "Additional Properties." Such consenting owners, and all lots within the Additional Properties, shall thereafter have the same rights and obligations as if such owners, and their lots, had consented to and joined in the execution of this Declaration and all provisions contained in this Declaration shall apply to the real property described in such Declaration of Annexation in the same manner as if it were originally covered by this Declaration.

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

## **ARTICLE 15                    AMENDMENT**

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15.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within the Development to a purchaser other than Declarant, and subject to subsection 15.2(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.

15.2 Amendment After First Conveyance. After the conveyance of the first Lot within the Development 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, 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 Development, the provisions of Articles 14 and 15 may not be amended without the prior written consent of Declarant.

(c) Additional Approvals of City for Amendments to Particular Provisions. The provisions of Sections 1.7, 6.1(a), 5.9, 5.12, 5.13, 7.1, this subsection 15.2(c), and 16.1, 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 the 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 an 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 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 the 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 the 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, or to correct a typographical error.

15.3 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 subsection (a) or (b) above 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.

15.4 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 16**                      **GENERAL PROVISIONS**

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16.1 Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners, approved in writing by the City, and Recorded in accordance with Article 15, above.

16.2 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.

16.3 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.

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

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