

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

JETT RINK LLC  
7201 Edison Way  
Bakersfield, CA 93307

APN: 092-574-001 to 018

SPACE ABOVE THIS LINE FOR RECORDER'S USE

# VILLAS AT BELLA TERRA

## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**TRACT 2494**

**NOTICE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE DEVELOPMENT ARE SUBJECT TO CERTAIN MANDATORY PRELITIGATION PROCEDURES. SEE SECTIONS 17.1 – 17.4 OF ARTICLE 17 OF THIS DECLARATION. YOU ARE ADVISED TO READ THESE PROVISIONS CAREFULLY AND CONSULT WITH YOUR LEGAL COUNSEL IF YOU HAVE ANY QUESTIONS.**

**TABLE OF  
CONTENTS TO  
  
AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
  
FOR  
  
VILLAS AT  
BELLA TERRA**

		<b>Page Number</b>
<b>RECITALS</b>		1
<b>ARTICLE 1</b>	<b>DEFINITIONS</b>	2
	1.1 Definitions, Generally	2
	1.2 Absolute Majority	2
	1.3 Additional Charges	2
	1.4 Architectural Review Committee	2
	1.5 Architectural Rules	2
	1.6 Articles	2
	1.7 Assessment	2
	1.8 Association	2
	1.9 Board of Directors	2
	1.10 Bylaws	2
	1.11 Common Area	2
	1.12 Contract Purchaser/Contract Seller	3
	1.13 County	3
	1.14 Declarant	3
	1.15 Declaration	3
	1.16 Declaration of Annexation	3
	1.17 Development	3
	1.18 Director	3
	1.19 Governing Documents	3
	1.20 Improvement	3
	1.21 Lot	3
	1.22 Member	3
	1.23 Member in Good Standing	3
	1.24 Mortgage	3
	1.25 Owner	3
	1.26 Record; Recordation; Filed	4
	1.27 Residence	4
	1.28 Resident	4
	1.29 Rules	4
	1.30 Simple Majority	4
	1.31 Subdivision Map	4
	1.32 Supplemental Declaration	4
	1.33 Total Voting Power	4

<b>ARTICLE 2</b>	<b>HOMEOWNERS ASSOCIATION</b> . . . . .	4
2.1	Management and Operation . . . . .	4
2.2	Membership . . . . .	4
2.3	Voting . . . . .	4
2.4	Board of Directors . . . . .	5
2.5	Association Rules . . . . .	5
2.6	Manager and Other Personnel . . . . .	5
2.7	Capital Improvements . . . . .	5
2.8	Sale or Transfer of Association Property . . . . .	5
2.9	Transfer or Dedication of Common Area to Public Agency or Utility. . . . .	6
2.10	Borrow Money. . . . .	6
2.11	Mortgage of Association Property. . . . .	6
2.12	Mergers and Consolidations. . . . .	6
2.13	Dissolution. . . . .	6
2.14	Limitation of Liability. . . . .	6
<b>ARTICLE 3</b>	<b>COMMON AREA</b> . . . . .	6
3.1	Purpose of Common Area. . . . .	6
3.2	Conveyance of Common Area. . . . .	6
3.3	Owners Non-Exclusive Easements of Enjoyment. . . . .	6
3.4	Assignment of Rights of Use. . . . .	7
3.5	Common Area Construction. . . . .	7
3.6	Easements Granted by Board. . . . .	8
<b>ARTICLE 4</b>	<b>COMMON AREA</b> . . . . .	8
4.1	Offensive Conduct, Nuisances, Noise . . . . .	8
4.2	Residential Use. . . . .	8
4.3	Restriction on Businesses. . . . .	8
4.4	Use of the Common Area . . . . .	8
4.5	Requirement of Architectural Approval. . . . .	8
4.6	Sports Apparatus. . . . .	9
4.7	Window Coverings. . . . .	9
4.8	Signs. . . . .	9
4.9	Antennas . . . . .	9
4.10	Trash Disposal. . . . .	9
4.11	Vehicles and Parking. . . . .	9
4.12	Garages . . . . .	10
4.13	Compliance with Law s. . . . .	11
4.14	Animals . . . . .	11
4.15	Rental of Lots . . . . .	11
4.16	Clotheslines . . . . .	12
4.17	Mailboxes and Exterior Newspaper Tubes . . . . .	12
4.18	Activities Affecting Insurance. . . . .	12
4.19	Variances. . . . .	12
<b>ARTICLE 5</b>	<b>ALTERATIONS TO LOTS AND RESIDENCES.</b> . . . .	13
5.1	Approval by Architectural Review Committee. . . . .	13
5.2	Drainage. . . . .	13
5.3	Minimum Construction Standards. . . . .	13
5.4	Designated Building Sites. . . . .	13

<b>ARTICLE 6</b>	<b>ASSESSMENTS AND LIENS</b> .....	13
6.1	Covenant of Owner .....	13
6.2	Creation of Lien .....	14
6.3	Purpose of Assessments .....	14
6.4	Authority of the Board .....	14
6.5	Regular Assessment .....	14
6.6	Special Assessments .....	15
6.7	Reimbursement Assessments .....	15
6.8	Enforcement Assessments .....	15
6.9	Failure to Fix Assessments .....	16
6.10	Offsets .....	16
6.11	Delinquent Assessments .....	16
6.12	Assessment Liens .....	16
6.13	Foreclosure of Association Assessment Liens .....	19
6.14	Priority .....	20
6.15	Association Funds .....	20
6.16	Waiver of Exemptions .....	20
6.17	Property Exempt From Assessments .....	20
<b>ARTICLE 7</b>	<b>MAINTENANCE OF PROPERTY</b> .....	20
7.1	Association Responsibilities .....	20
7.2	Owners' Responsibilities .....	21
7.3	Compliance With Architectural Provisions .....	21
7.4	Owner Failure to Maintain .....	21
7.5	Owner Liability .....	21
7.6	Authority for Entry of Lot .....	21
7.7	Cooperative Maintenance Obligations .....	21
7.8	Association Liability .....	21
7.9	Board Discretion .....	22
7.10	Inspection of Property Maintained by Association .....	22
7.11	Preparation and Distribution of Budgets, Financial Statements and Reports .....	22
7.12	Litigation .....	23
<b>ARTICLE 8</b>	<b>ARCHITECTURAL CONTROL</b> .....	24
8.1	Submission of Plans and Specifications .....	24
8.2	Establishment of Architectural Review Committee .....	24
8.3	Duties .....	24
8.4	Meetings .....	24
8.5	Architectural Rules .....	24
8.6	Application .....	25
8.7	Fees .....	25
8.8	Grant of Approval .....	25
8.9	Form of Approval .....	25
8.10	Appeal of Denial to Board of Directors .....	25
8.11	Time for Architectural Review Committee Action .....	26
8.12	Commencement .....	26
8.13	Completion .....	26
8.14	Inspection .....	26
8.15	Non-Waiver .....	27
8.16	Estoppel Certificate .....	27
8.17	Liability .....	27
8.18	Variances .....	27
8.19	Compliance With Governmental Requirements .....	28

<b>ARTICLE 9</b>	<b>EASEMENTS</b> .....	28
9.1	Easements in General .....	28
9.2	Utility Easements .....	28
9.3	Easements Granted by Board. ....	28
9.4	General Association Easements for Maintenance, Repair and	28
9.5	Utility Maintenance and Repair Easements. ....	28
9.6	Encroachment Easements. ....	29
<b>ARTICLE 10</b>	<b>ENFORCEMENT</b> .....	29
10.1	Violations as Nuisance .....	29
10.2	Violation of Law .....	29
10.3	Owners' Responsibility for Conduct and Damages .....	29
10.4	No Avoidance .....	29
10.5	Rights and Remedies of the Association .....	29
10.6	Disciplinary Rules .....	30
10.7	Emergency Situations .....	30
10.8	Alternative Dispute Resolution .....	30
10.9	Non-Waiver .....	30
10.10	Notices .....	31
10.11	Costs and Attorneys' Fees .....	31
10.12	Owner Indemnification .....	31
<b>ARTICLE 11</b>	<b>INSURANCE</b> .....	31
11.1	Types of Insurance Coverage .....	31
11.2	Coverage Not Available .....	32
11.3	Copies of Policies .....	32
11.4	Individual Owner's Property Insurance .....	32
11.5	Trustee .....	32
11.6	Adjustment of Losses .....	32
<b>ARTICLE 12</b>	<b>DAMAGE OR DESTRUCTION; CONDEMNATION</b> .....	32
12.1	Damage to or Destruction of Improvements on Association Property .....	32
12.2	Damage to or Destruction of Improvements on Lots .....	33
12.3	Condemnation of Common Area .....	33
12.4	Condemnation of Lots .....	33
12.5	Severance of Component Interest Prohibited. ....	33
<b>ARTICLE 13</b>	<b>PROTECTION OF MORTGAGEES</b> .....	33
13.1	Amendments Affecting Mortgages .....	33
13.2	Default by Owner; Mortgagee's Right to Vote .....	33
13.3	Breach; Obligation After Foreclosure .....	33
13.4	Right to Examine Books and Records of the Association .....	33
13.5	Declaration to Conform With Mortgagee Requirements .....	34
<b>ARTICLE 14</b>	<b>ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS</b> ....	34
14.1	Annexation of Other Property. ....	34
14.2	Declarations of Annexation .....	34
14.3	Supplemental Declarations .....	34
<b>ARTICLE 15</b>	<b>DECLARANT'S DEVELOPMENT RIGHT</b> .....	34
15.1	Declarant's Right to Develop the Development. ....	34
15.2	Use of Common Area by Declarant. ....	35

15.3	Independent Design Review .....	35
15.4	Termination of Declarant's Rights .....	35
15.5	No Amendment or Repeal .....	35
<b>ARTICLE 16</b>	<b>AMENDMENT .....</b>	<b>35</b>
16.1	Amendment Before First Conveyance .....	35
16.2	Amendment After First Conveyance .....	35
16.3	Restatements .....	36
16.4	Bureau of Real Estate.....	37
16.5	Effective Date of Amendment .....	37
16.6	Reliance on Amendment.....	37
<b>ARTICLE 17</b>	<b>DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES.....</b>	<b>37</b>
17.1	Notices Regarding Litigation .....	37
17.2	Mediation .....	38
17.3	Judicial Reference .....	39
17.4	Covenant Not to Sue .....	40
<b>ARTICLE 18</b>	<b>GENERAL PROVISIONS .....</b>	<b>40</b>
18.1	Term .....	40
18.2	Severability .....	40
18.3	Liberal Construction.....	40
18.4	Easements Reserved and Granted .....	40
18.5	Power of Attorney .....	40
<b>EXHIBIT "A"</b>		

---

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
VILLAS AT BELLA TERRA**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by Jett Rink LLC, a California limited liability company (the "Declarant").

---

**RECITALS**

---

A. Declarant is the owner of certain real property located in San Luis Obispo County, California, which is more particularly described as follows (the "Development"):

Lots 1 through 18 inclusive, and private streets known as Finnians Way and Derek Court, of Tract 2494, as shown on the map recorded in Book 29 of Maps, Pages 49 through 53 inclusive of Maps, in the office of the County Recorder of the County of San Luis Obispo, State of California.

B. On March 12, 2007, a previous Declaration of Covenants, Conditions, and Restrictions for Tract 2494 was recorded in the Official Records of San Luis Obispo County, California as Document No. 2007016197, which Declarant hereby amends and restates in its entirety.

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

D. It is the further intention of the Declarant to sell and convey residential Lots improved by single family Residences originally constructed by Declarant to Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, liens, grants of easements, rights, rights of way, charges and equitable servitudes between Declarant and such Owners as set forth in this Declaration and any duly adopted amendments thereto.

E. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.

F. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

## **ARTICLE 1**                    **DEFINITIONS**

---

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

1.2     Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.3     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.

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

1.5     Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Architectural Review Committee pursuant to Section 8.5 of this Declaration.

1.6     Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.7     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, which shall have the meaning set forth in Section 6.5 of this
- (b)     Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.
- (c)     Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.
- (d)     Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.8     Association. "Association" shall mean the Villas at Bella Terra Homeowners Association, Inc., a California nonprofit mutual benefit corporation, its successors and assigns.

1.9     Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

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

1.11    Common Area. "Common Area" shall mean all real property and improvements owned or maintained by the Association for the common use and enjoyment of the Owners and Residents of the Development. The Common Area owned by the Association shall consist of Lots 1 and 18, as shown on the Subdivision Map, which shall include without limitation a drainage basin and open space, and the private streets known as Finnians Way and Derek Court as shown on the Subdivision Map. The Common Area improvements shall include without limitation all entry



monumentation, vehicle access gate, vehicle access gate system, mailbox cluster, lights, streets, asphalt paving, curb paving, walls, fencing, stone pilasters, trees and landscaping which are owned by the Association for the common use and enjoyment of the Owners and Residents of the Development, keeping the same in good condition and repair.

1.12 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.13 County. "County" shall mean San Luis Obispo County, California, and its various departments, divisions, employees and representatives.

1.14 Declarant. "Declarant" means Jett Rink LLC, a California limited liability company. The term "Declarant" shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant's successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant.

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

1.16 Declaration of Annexation. "Declaration of Annexation" means a declaration annexing real property to the Development and subjecting the real property described therein to this Declaration, all as more particularly described in Article 14, below.

1.17 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.

1.18 Director. "Director" shall mean a member of the Board of Directors of the Association.

1.19 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules (including the Architectural Rules), and the policies and resolutions duly adopted by the Board.

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

1.21 Lot. "Lot" shall mean any plot of land shown upon the Subdivision Map, with the exception of the Common Area lots and any named streets shown on the Subdivision Map.

1.22 Member. "Member" shall mean an Owner, and refers to membership in the Association.

1.23 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.24 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

1.25 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 Contract Sellers, but excluding Contract Purchasers and 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 (a) community property or other equitable rights not shown of Record; or (b) rights of adverse possession not shown of Record. Where the context requires, the term "Owner" shall include the members of the

Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.26 Record; Recordation: Filed. "Record," "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.

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

1.28 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 as defined in this Declaration.

1.29 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 of Directors from time to time, and the Architectural Rules as adopted and published by the Architectural Review Committee from time to time.

1.30 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

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

1.32 Supplemental Declaration. "Supplemental Declaration" means any declaration (as defined in California Civil Code Section 4135) recorded pursuant to Section 14.3, below, which supplements this Declaration and which may affect only a portion of the Development.

1.33 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

## **ARTICLE 2** **HOMEOWNERS ASSOCIATION**

---

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

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

2.3 Voting.

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

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

(i) Class A Members. Class A Members shall initially be all Owners except Declarant and shall have one membership shall be entitled to one (1) vote for each Lot owned. If more than one

(1) Member owns an interest in the fee title to a Lot, only one (1) vote may be cast with respect to such Lot.

(ii) Class B Member. The Only Class B Member shall be the Declarant, who will be entitled to three (3) votes for each Lot in which the Declarant owns an interest in the fee title.

(c) Conversion of Class B Membership. A Class B Membership shall cease and be irreversibly converted to a Class A Membership on the occurrence of one (1) of the following events:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) On the second (2<sup>nd</sup>) anniversary of the first (1<sup>st</sup>) conveyance of a fee title interest in a Lot.

(d) Suspension of Voting Rights. Only Members in Good Standing shall be entitled to vote. A Member's voting rights may be temporarily suspended under those circumstances described in Section 10.5(b), below.

(e) Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.8, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than Declarant is intended to preclude Declarant from casting votes attributable to any Lots owned by Declarant. Instead, approval by the Association's Members requires the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Association other than Declarant.

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

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

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

2.7 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of at least a majority of each class of Members. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 12 of this Declaration.

2.8 Sale or Transfer of Association Property. The Board of Directors shall have the power to sell the Association's property provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of at least a majority of each class of Members.

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

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

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

2.12 Mergers and Consolidations. The Association may (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (ii) annex additional property to the Development, in accordance with Section 14.1, below.

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

2.14 Limitation of Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or Declarant or any employee, agent or representative of Declarant, when acting in his, her or its capacity as a director, officer or committee member of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him, her or it, acted in good faith and in a manner such person or entity reasonably believed to be in the best interests of the association or the Owners, without willful or intentional misconduct, except to the extent the damage, loss or prejudice suffered or claimed is fully covered by insurance or the member of the Board or committee, officer, Declarant or employee, agent or representative is fully indemnified under the Bylaws. In addition, no volunteer member of the Board or volunteer officer of the Association shall be personally liable in excess of available insurance coverage to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, as a result of the tortious act or omission of the volunteer member of the Board or volunteer officer that was committed or omitted in his or her capacity as volunteer director or volunteer officer of the Association, if all of the criteria set forth in California Civil Code Section 5800, are met and the conditions to applicability of such section are satisfied.

Nothing in this Section 2.14 shall be construed (i) to limit or expand the liability of the Association for its negligent, willful or intentional act or omission or for any negligent, willful or intentional act or omission of an officer or director of the Association, or (ii) to limit or expand the liability of any Owner whose negligent, willful or intentional act or omission directly contributes to the injury or damage of any person arising out of use of the Common Area, or (iii) to limit the obligation of Owners to pay assessments to the Association in connection with any injury or damage claim arising out of use of the Common Area that exceeds the limits of available insurance.

### **ARTICLE 3** **COMMON AREA**

---

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

3.2 Conveyance of Common Area. Declarant shall convey fee simple title to the Common Area lots and streets within the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot to a purchaser.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive

easement of use of and enjoyment in, to, and throughout the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

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

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

(c) Granting of Easements. The right of the Board, as set forth in Section 3.6 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area;

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

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

(f) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area;

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

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

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

3.4 Assignment of Rights of Use. In addition to an Owner' assignment of Common Area use rights to a tenant as provided in Section 4.15, below, upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have assigned all such Common Area rights exclusively to the Contract Purchasers of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Unit to the extent necessary to discharge the Owner's obligations and rights as a landlord. Any Common Area rights of enjoyment assigned pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

3.5 Common Area Construction. Following the conveyance of a Common Area lot or parcel to the Association, no person or entity other than the Association or its duly-authorized agents (i) shall construct,

reconstruct, refinish, alter, or maintain any Improvement upon the Common Area, (ii) shall make or create any excavation or fill upon the Common Area, (iii) shall change the natural or existing drainage of the Common Area, or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

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

#### **ARTICLE 4 USE RESTRICTIONS**

---

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

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

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

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

(b) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development.

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

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

4.6 Sports Apparatus. Except for sports apparatus installed and maintained by the Association, no sports apparatus, whether portable or fixed, including without limitation basketball standards shall be permitted within the Development. As used in this section, the term "sports apparatus" does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board of Directors shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

4.7 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Residences and garages and shall comply with any Rules adopted by the Board of Directors. 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. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.9 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 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) All Permitted Dishes shall be placed in locations which are not visible from the streets within the Development.

(b) All Permitted Dishes shall be painted to blend into the background against which they are mounted.

(c) 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 Architectural Review Committee.

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

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 Container. Except as provided in Section 4.10(b), the containers shall be maintained upon each Lot and shall be screened or otherwise concealed from view from the Common Area, the streets or any other Residences.

(b) Trash Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in Section 4.10(a) after collection. The Board may adopt Rules regulating the placement of containers for trash collection which Rules may include 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 such 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. The Board, in its complete discretion and upon such basis and terms as its 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 permitted within the Development 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 pickup trucks and vans which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive 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 washing, maintenance, or repairs of any kind may be made to vehicles within the Development except such emergency repairs as are necessary to remove the vehicle from the Development.

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

(e) No Parking Areas. No vehicle may be parked on any portion of the Common Area, including the Common Area streets, except to the extent of any guest parking rules as may be established by the Board pursuant to Section 4.11(f).

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

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

#### 4.12 Garages.

(a) Garage Condition. Each Owner shall keep his or her garage in a neat, orderly, sanitary, and safe condition.



(b) Closed Doors. Each garage door shall remain closed except during the time required for the entry and exit of vehicles and individuals and when and only for as long as the garage is in active use.

(c) No Conversion. No garage shall be remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would interfere with the ability of the Owner of the Lot to accommodate the number of 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 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 County ordinances. Each dog must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of its Owner's Lot.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this section. 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.

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

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

(a) Notification of the Board. The Owner shall notify the Association of the duration of the lease and shall provide the Association with (i) the names of the tenants, (ii) the names of the members of the tenants' household, (iii) the tenants' telephone numbers, and (iv) such other information as the Board deems appropriate. The Association may, in its discretion, adopt a form for the provision of the information required by this subsection, together with an acknowledgment by the tenants that they have read, understand and agree to abide by the Governing Documents, which form shall be submitted to the Association for each rental of a Lot.

(b) Owner Responsibility. Each Owner renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Lots and Common Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner renting a Lot shall

provide the tenant with copies of the Governing Documents and all subsequent amendments.

(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 arising or alleged to have arisen out of the enforcement or non-enforcement 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, including eviction as provided herein, 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.

(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. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained upon any Lot.

4.17 Mailboxes and Exterior Newspaper Tubes. Except for the cluster-style, grouped mailboxes which are the mail receptacles for the Lots, no newspapers tubes or mailboxes shall be erected or maintained within the Development.

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

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

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

(b) Board Hearing. The Board shall conduct a hearing on the variance within forty-five days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen 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 ALTERATIONS TO LOTS AND RESIDENCES**

5.1 Approval by Architectural Review Committee. Except for Improvements constructed or installed by Declarant, no building, fence, wall 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 Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or Common Area as established in connection with the approval of the final Subdivision Map, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other public authorities having jurisdiction. Each Owner shall be responsible for controlling the surface water runoff from the Owner's Lot to prevent such runoff from draining onto an adjacent Lot, except within Improved drainage channels.

5.3 Minimum Construction Standards. The following minimum construction standards shall be observed in connection with any construction or Improvement project on any Lot:

(a) Exterior Lighting. All lights installed on the exterior of a Residence or on a Lot shall be adequately and properly shielded from other Residences and the Common Area, such that direct rays from the light source are directed downward and do not cross property lines.

(b) Prefabricated and Secondary Dwelling Structures Prohibited. To the extent permitted by law, no prefabricated residential dwellings, including but not limited to mobile homes and trailers, shall be placed, stored or maintained on a Lot. In addition, no Lot shall be constructed with more than one (1) Residence, and no Lot shall be improved with any form of secondary dwelling structure.

(c) Roofing Materials. All Residences within the Development shall utilize dark roof materials.

(d) Minimum Setbacks. For Lots 2 through 16 as shown on the Subdivision Map, the minimum setback shall be ten feet (10') from the Lot line for the non-garage portion of the Residence and twenty feet (20') for the garage of the Residence. Lot 17 shall have a minimum setback of twenty feet (20') from the southerly property line for all structures. A diagram of the setbacks for each Lot is shown on attached Exhibit "A".

5.4 Designated Building Sites. The designated building site and access driveway for each Lot is shown on attached Exhibit "A". No Residence or other structural Improvement shall be constructed outside of the designated building site for each Lot.

## **ARTICLE 6 ASSESSMENTS AND LIENS**

6.1 Covenant of Owner.

(a) Owner's Assessment Obligation. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Regular Assessments, (ii) Special

Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens as hereinafter provided.

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

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and shall be secured by a lien upon the property against which such Assessment is levied, notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for (i) managing and operating the Development, (ii) conducting the business and affairs of the Association, (iii) maintaining and promoting the property values of the Owners and Residents of the Development, (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development, (v) enforcing the Governing Documents, and/or (vi) otherwise benefitting the Owners. Notwithstanding anything to the contrary herein, the Association shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in California Civil Code Section 5510.

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

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, or as otherwise provided by law, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year on an accrual basis (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 and other properties 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. Pursuant to California Civil Code Section 5605 (a) and (b), and except as otherwise provided by law, 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 the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Owners voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Owners of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 5605 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(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 pro-rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

#### 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 as defined in California Civil Code Section 5610, in any fiscal year the Board may not levy Special Assessments which, are more than twenty percent (20%) greater than the regular assessment for the Association's preceding year or, 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 Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 5605 and 5610 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title I of the Corporations Code and Section 7613 of the Corporations Code. Notwithstanding any other provision contained in this Section 6, the Association may increase assessments necessary for emergency situations pursuant to California Civil Code Section 5610.

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

6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Association may Record a lien against an Owner's Lot for delinquent Assessments and all Additional Charges as provided in Section 6.12, below, and in accordance with the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000 et seq.

6.12 Assessment Liens.

(a) Notice of Collection and Lien Enforcement Procedure. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

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

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

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

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

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

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

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

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

(c) Meet and Confer Program. Prior to Recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) Decision to Record a Lien. The decision to Record a lien for delinquent Assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board Members in an open meeting. The Board shall record the vote in the minutes of that meeting.

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

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

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

(ii) The Notice of Delinquent Assessment shall be signed by the President of the Association.

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

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

(g) Assessment Liens for Repair of Common Areas. A Reimbursement Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Member or the

Member's guests or tenants were responsible may not become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

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

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

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

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

(l) Notice of Default. A notice of default shall be served by the Association on the Owner's legal representative.

(m) Secondary Address. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code Section 5300(b)(1). The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

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

(o) Collection of Delinquent Assessments. The Association may seek to collect delinquent Regular Assessments or Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, and Additional Charges, may not collect that debt through judicial or non-judicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:



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

(ii) By Recording a lien on the Owner's Lot which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, and Additional Charges, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than 12 months delinquent. If the Board of Directors elects to Record a lien under these provisions, prior to Recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution.

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

6.13 Foreclosure of Association Assessment Liens. Except for Assessments owed to the Association by Declarant, if the Association seeks to collect delinquent Regular Assessments and/or Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, or Additional Charges, or any Assessments that are more than 12 months delinquent, may use judicial or non-judicial foreclosure subject to the following conditions:

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

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

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

(iv) Right of Redemption. A non-judicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

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

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

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

(d) Right of Redemption. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the Association, subject to the conditions of Section 5705 and 5715 of the Civil Code.

6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this article shall have priority as of the date of Recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage Recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. 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.

6.17 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

(a) All property dedicated to and accepted by the County or other local public authority and devoted to public use.

(b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure. Such exemption shall be applicable only during the period in which the Association is Record Owner of such Lot.

## **ARTICLE 7                   MANAGEMENT & MAINTENANCE OF PROPERTY**

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

(a) Common Area. The Association shall maintain the Common Area and all Common Area improvements, including without limitation all entry monumentation, vehicle access gate, vehicle access gate system, mailbox cluster, lights, streets, asphalt paving, curb paving, walls, fencing, stone pilasters, trees and landscaping which are owned by the Association for the common use and enjoyment of the Owners and Residents of the Development, keeping the same in good condition and repair. Notwithstanding anything to the contrary herein, the Association shall maintain in a viable condition and provide on-going maintenance of the drainage basin, and any adjacent landscaping and fencing on Lot 1 in perpetuity (collectively the "Basin Area"), until a public agency accepts the obligation to maintain such Basin Area in perpetuity at which time the Association's obligations shall cease and the Common Area shall no longer include the Basin Area.

(b) Other Association Property. The Association shall maintain and all other real and personal

property that may be acquired by the Association, keeping such property in good condition and repair.

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

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

(b) Landscaping. Each Owner shall maintain the landscaping on his or her Lot in a neat and attractive condition. 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 (1) year of occupancy of the Lot's Residence.

(c) Fences. Each Owner shall maintain, repair and replace the fences and walls located on his or her Lot, keeping the same in good and attractive condition and repair.

(d) 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.

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

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

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

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

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

7.8 Association Liability. The Association shall not be responsible or liable for any

maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.9 Board Discretion. Except as provided in Section 7.10, below, the Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this article.

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

7.11 Preparation and Distribution of Budget, Financial Statements and Reports. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, or as otherwise provided by law, the Board shall complete and distribute to all Owners the following budgets, reports and financial statements:

(a) A budget for each fiscal year shall be distributed not less than thirty (30) days nor more than ninety (90) days before the beginning of such fiscal year consisting of at least the following:

(1) A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.

(2) A summary of the Association's reserves, prepared pursuant to Cal. Civil Code §5565.

(3) A summary of the reserve funding plan adopted by the Board pursuant to Cal. Civil Code §5550(b)(5). The summary shall include notice to Members that the full reserve study plan is available upon request, and the Association shall provide the full reserve plan to any Member upon request.

(4) A statement as to whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(5) A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to Section 5560, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the assessment.

(6) A statement as to the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

(7) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain. The statement shall include reserve calculations made using the formula described in paragraph (4) of subdivision (b) of Section 5570, and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

(8) A statement as to whether the Association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(9) A summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies. For each policy, the summary shall include the name of the insurer, the type of insurance, the policy

limit, and the amount of the deductible, if any. To the extent that any of the required information is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it with the annual budget report. The summary distributed pursuant to this paragraph shall contain, in at least 10-point boldface type, the following statement:

This summary of the Association's policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage.

(b) Within 30 to 90 days before the end of the fiscal year, the Board shall distribute an annual policy statement that provides the Members with information about association policies. The annual statement shall include all of the following information:

- (1) The name and address of the person designated to receive official communications to the Association.
- (2) A statement explaining that a Member may submit a request to have notices sent to up to two different specified addresses.
- (3) The location, if any, designated for posting of a general notice.
- (4) Notice of a Member's option to receive general notices by individual delivery.
- (5) Notice of a Member's right to receive copies of meeting minutes.
- (6) The statement of assessment collection policies.
- (7) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
- (8) A statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the governing documents.
- (9) A summary of dispute resolution procedures.
- (10) A summary of any requirements for Association approval of a physical change to property.
- (11) The mailing address for overnight payment of assessments.
- (12) Any other information that is required by law or the governing documents or that the Board determines to be appropriate for inclusion.

(c) Instead of distributing the annual statement described in Section 7.11(b), the Board may elect to distribute a summary of the annual statement to all of the Members. Instructions on how to request a complete copy of the annual summary shall be printed in at least 10-point boldface type on the first page of the summary.

7.12 Litigation. Subject to the provisions of California Civil Code section 5980, or any compatible superseding statutes, the Board has the authority to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to: (a) the enforcement of the provisions of the Governing Documents; (b) damage to the Common Area; (c) damage to any Lot, which the Association is obligated to maintain or repair; or (d) damage to a Lot or Residence which arises out of, or is integrally related to, the Common Area or a Lot that the Association is obligated to maintain or repair.

## ARTICLE 8                      ARCHITECTURAL CONTROL

---

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

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

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

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

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

8.3     Duties. It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. All decisions regarding proposed Improvements shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

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

8.5     Architectural Rules. The Architectural Review Committee may, from time to time, and subject to the Board's approval, 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 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 the 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 Common Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard, in accordance with California Civil Code Section 5855.

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

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

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

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

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 of Directors. In accordance with California Civil Code Section 4765, unless the Architectural Review Committee is comprised of the members of the Board of 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 Association's Board of Directors. The Board shall consider the reconsideration request at a meeting held in accordance with California Civil Code Section 4900 et seq.

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 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 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 one year after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within one year after the date of Recordation), 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 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 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 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 nor less than fifteen 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 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 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 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 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 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 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 Record an estoppel certificate, if permitted by the County, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by such Owner comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

8.17 Liability. Neither Declarant, Association, Board, the Architectural Review Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any portion of the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 8.16, whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Architectural Review Committee, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Review Committee. Every Owner, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against Declarant, Association, Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

8.18 Variances.

(a) Reasonable Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this article and those minimum construction standards in Article 5, except for Section 5.1, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite

noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development. At the request of the Architectural Review Committee the Association Board is authorized and empowered to execute and Record a notice of any variance granted pursuant to this section in a form acceptable to the County Recorder's Office.

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

## **ARTICLE 9** EASEMENTS

---

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

9.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of (i) electric, telephone, 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 Common Area except for those installations maintained by utility companies, public, private, or municipal.

9.3 Easements Granted by Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each purchaser, 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 unreasonably 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.

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 Common Area, (ii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 7.4 and Section 7.6, and (iii) otherwise perform its obligations under this Declaration.

9.5 Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections or electricity, gas or telephone, television lines or drainage facilities are installed within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Lots or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. Wherever sanitary sewer house connections and/or water Residence connections or electricity, gas or telephone lines or drainage facilities are installed within the Development, which connections serve more than one Lot, the Owner of each Lot served by said connections shall

be entitled to the full use and enjoyment of such portions of said connections as service his Lot. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Lot for uncovering any such lines. Any Owner or utility company exercising the rights granted in this section shall be obligated to restore the Lot and the Residence entered to substantially its former condition.

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

## **ARTICLE 10                      ENFORCEMENT**

---

10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

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

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

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

### 10.5 Rights and Remedies of the Association.

(a) Rights Cumulative. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

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

again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

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

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

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

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

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

10.8 Alternative Dispute Resolution. California Civil Code Section 5930 shall be complied with respect to any dispute subject to such section.

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 the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

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

## **ARTICLE 11                      INSURANCE**

---

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

(a) Property Insurance. The Association shall obtain and maintain a master or blanket policy of property insurance, written on all risk, replacement cost basis, on all Common Area, and all Improvements within the Development for which the Association has an obligation to maintain or insure. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 11.5 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 member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and 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 common interest development projects similar in construction, location, facilities, and use.

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

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, 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 of each year's estimated annual operating expenses one hundred percent (100%) of reserves.

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 hereinabove described. 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 of Directors, 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. Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

## **ARTICLE 12            DAMAGE OR DESTRUCTION; CONDEMNATION**

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

12.2 Damage to or Destruction of 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 approved by the Architectural Review Committee in accordance with Article 8 of this Declaration; or (ii) completely remove all remaining portions of such damaged or destroyed Improvements. Such repair, rebuilding, or removal shall be commenced within a reasonable time, which shall in no event exceed one year after the occurrence of the damage or destruction and shall be completed within one year after the date of commencement unless a longer period is agreed to in writing by the Board.

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

12.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasipublic 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 contemnor 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.

12.5 Severance of Component Interests Prohibited. Except as expressly provided for in the provisions of Section 12.3 and 12.4 of this Declaration relating to condemnation, or pursuant to Cal. Civil Code section 4610 together with any compatible superseding statutes, an Owner shall not be entitled, for any purpose, to sever its, his, her or their Lot and/or Membership from such Owner's joint interest in the fee title of the undivided interest Common Area. Subject to the provisions of Sections 12.3 and 12.4 above, none of the component interests in any Lot or in the Common interest appurtenant thereto can be separately sold, conveyed, encumbered, hypothecated or otherwise dealt with and any violation or attempted violation of this provision shall be void. Nothing contained in the provisions of this Declaration shall preclude the Owner of a fee title interest in any Lot from creating an estate for life, an estate for years or from creating co-tenancy or joint tenancy in the ownership of the fee title of a Lot with any other person or persons.

## **ARTICLE 13**                    **PROTECTION OF MORTGAGEES**

---

13.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recording thereof is given to the Association 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: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code Section 2924; and (c) 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) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;
- (b) Require the Association to provide an audited statement for the preceding fiscal year at no expense to the requesting entity; and
- (c) 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 the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association 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 ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

14.1 Annexation of Other Property. Real property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of (1) the property owner, (2) Members entitled to exercise not less than two-thirds of the Voting Power of each class of membership of the Association, and (3) the Board of Directors. After the Class B membership has ceased, the approval of the Members required by this section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining the requisite approval of the Members pursuant to this section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 14.3, below.

14.2 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Lots and Common Area, if any, within the annexing property, and shall be signed by the owner of the annexing property and shall include a certificate, signed by the President and Secretary of the Association attesting to the fact that the required Member and Board approval has been obtained. A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

14.3 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the annexing property, subject to the same approval requirements for a Declaration of Annexation pursuant to Sections 14.1, and 14.2, above. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

#### **ARTICLE 15 DECLARANT'S DEVELOPMENT RIGHT**

15.1 Declarant's Right to Develop the Development. The Association and Owners shall not do anything to interfere with the right of Declarant to subdivide, sell, or rent any portion of the Development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of Development or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Lot or any portion of the Development is owned by Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the County or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Development such structures, signs and displays as may be



reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

15.2 Use of Common Area by Declarant. Declarant may enter upon the Common Area to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area. Declarant shall also have the right of nonexclusive use of the Common 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 Common Area that are damaged or cluttered in connection with such activities) shall be borne solely by Declarant and any other sponsor of the activity or event. The rights reserved to Declarant by this section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant.

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

15.4 Termination of Declarant's Rights. If Declarant conveys all of its rights, title and interest in the Development to any person or entity and the acquiring person or entity is designated as a successor Declarant as to all the property conveyed, then Declarant shall be relieved of the performance of any further duty or obligation hereunder, and successor Declarant shall be obligated to perform all such duties and obligations of Declarant. This section shall not terminate any responsibility of Declarant for acts or omissions occurring prior to the conveyance to such person or entity. However, Declarant may to enter into a contract or agreement dealing with such acts or omissions.

15.5 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 16            AMENDMENT**

---

16.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within the Development to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record by an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

16.2 Amendment After First Conveyance. After the conveyance of the first Lot within 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 paragraph, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an Absolute Majority, including the holders of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) an Absolute Majority of the Association; and (ii) the vote of a majority of the Total Voting Power held by Members other than Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals of County for Amendments to Particular Provisions. The provisions of Sections 5.3, 5.4 and 7.1(a) shall not be amended without the prior written consent of the County.

(c) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as Declarant owns a Lot within the Development, and subject to Section 17.1, the provisions of Articles 15, 16, and 17 shall not be amended without the prior written consent of Declarant.

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

(e) Right of Amendment if Requested by County. Anything in this article to the contrary notwithstanding, Declarant reserves 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 County to reflect a modification of the development permits which requires a conforming amendment to this Declaration. Any such amendment shall be effectuated by the Recordation, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, and signed by the Director of Planning and Building of the County of San Luis Obispo, with their signatures acknowledged, specifying the County requested the amendment and setting forth the amendatory language requested by the County. Recordation of such a Certificate shall be deemed conclusive proof of the County's request for such an amendment, and such Certificate, 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 of Directors 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.

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

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

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

constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

16.4 Bureau of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Bureau of Real Estate in accordance with section 2800 of the Commissioner's Regulations so long as the Development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

16.5 Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the president and secretary 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.

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

## **ARTICLE 17 DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES**

### 17.1 Notices Regarding Litigation.

(a) Notices to Owners Regarding Significant Legal Proceedings. Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Article 17, the Board shall not cause nor permit the Association to institute any significant legal action or proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Owners with at least thirty (30) days' prior written notice of the Association's intention to institute legal action or proceedings. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is being prosecuted. For purposes of this Declaration, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (i) The levy of a special assessment to fund all or any portion of the action or proceeding;
- (ii) The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;
- (iii) The amount of the claim is in excess of twenty-five thousand dollars (\$25,000); or
- (iv) A material adverse effect on the ability to sell and/or refinance the Lots within the Development during the period the action or proceeding is being prosecuted.

Notwithstanding the foregoing, if the Board in good faith determines that there is insufficient time to provide prior notice to the Owners as required in this Section 17.1(a) before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board shall provide the Members with notice as required in this provision.

(b) Notice to Owners Regarding Suit Against Declarant or Other Developer Parties. At least thirty (30) days before filing any civil action by the Association against the Declarant or other builder, developer or contractor of the Development ("Other Developer Party(ies)") for alleged damage to the Common Area, alleged

damage to any portion of the Development that the Association is obligated to maintain or repair, or alleged damaged to a Lot or Residence that arises out of, or is integrally related to, damage to the Common Area or a portion of the Development that the Association is obligated to maintain or repair, the Board shall provide a written notice to each Owner who appears on the records of the Association when the notice is provided that complies with California Civil Code section 6150. This notice shall specify that (i) a meeting will take place to discuss problems that may lead to the filing of a civil action or arbitration, (ii) the options, including civil actions or arbitrations, that are available to address the problems, and (iii) the time and place of the meeting. Notwithstanding the above, if the Association has reasons to believe that the applicable statute of limitations will expire before the Association files the civil action or arbitration, the Association may give notice, as described above, within thirty (30) days after the filing of the action or arbitration.

(c) Notice Not Required for Suits to Enforce Declaration. Notwithstanding the provisions of Sections 17.1(a) and (b), notice shall not be required in order to commence and pursue any action against an Owner, including Declarant, to enforce the Declaration as described in Article 10 or to collect delinquent assessments as described in Article 6.

(d) Prelitigation Notices to Declarant and Other Developer Parties. If the Board on behalf of the Association proposes to file an action or other legal proceeding against the Declarant or any Other Developer Party for defects in the design or construction of the Development or for a violation of the standards or provisions set forth in California Civil Code sections 896–897, the Board and/or the Association shall comply with all applicable prelitigation requirements of California Civil Code sections 910–938 and 6000, as the same may be hereafter amended, before the action or legal proceeding is filed.

(e) Notice to Owners of Settlement Agreement. If the Association and the Declarant or Other Developer Party enter into a settlement agreement, or if the matter has otherwise been resolved, where the defects and resulting damage giving rise to the dispute have not been corrected as provided in California Civil Code section 6100, the Association shall provide written notice to each Owner that the matter has been resolved, by settlement agreement or other means, including each of the disclosures required by California Civil Code section 6100.

## 17.2 Mediation.

(a) If the Association and the Declarant or Other Developer Parties cannot resolve any dispute or claim pursuant to the procedures described in Section 17.1 (including, as applicable, the procedures set forth in California Civil Code sections 6000 and 910–938), of if any Owner has a claim against Declarant or any Other Developer Parties, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that are acceptable to the parties. This provision shall be mandatory for the Owners, the Association and Declarant and shall be binding upon the Other Developer Parties that consent in writing to be bound by the procedures set forth in this Article 17.

(b) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(c) Within ten (10) days of the selection of the mediator, each party shall submit a memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a premediation conference, and all parties shall attend unless otherwise agreed in writing. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree in writing to extend the mediation period.

(d) The mediation shall be held in the county in which the Development is located or such other place as is mutually acceptable by the parties. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. The mediator does not have the authority to impose a settlement on the parties. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree in writing and assume the expenses of obtaining such advice.

(e) The mediator is subject to the provisions of California Evidence Code sections 1115–1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of California Evidence Code section 1118.

(f) Persons other than the parties, the representatives, and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(g) The expenses of witnesses shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless the parties in writing agree otherwise.

17.3 Judicial Reference. If the parties cannot resolve their dispute or claim in accordance with the procedures described in Section 19.2, the Claim shall be resolved by means of a general reference made under the provisions of Code of Civil Procedure sections 638–645.2, by a general referee appointed under the provisions of Code of Civil Procedure section 638(a) or any successor statutes thereto (the “Referee”). Either or both parties may take the necessary steps to secure the appointment of the Referee. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. None of the parties shall be required to participate in the judicial reference proceeding unless the parties are satisfied that all necessary and appropriate parties (including affected subcontracts and/or material suppliers) will participate.

(a) The Referee shall have the authority to hear and determine any and all issues in the action or proceeding, whether of fact or law, and to report a statement of decision. Neither the Referee nor any party shall have the right to impanel a jury. Each party waives the right to a jury trial. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

(i) The proceedings shall be heard in the County;

(ii) The Referee shall be a retired judge, or an attorney with at least five (5) years’ real estate experience;

(iii) Either party may object to the appointment of a particular referee for any grounds authorized under Code of Civil Procedure §641 or any successor statute thereto; and any dispute regarding the selection of the Referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court in which the action or proceeding is pending;

(iv) The Referee may require one or more pretrial conferences;

(v) The parties shall be entitled to such discovery as the Referee may authorize at the Referee’s sole and absolute discretion, provided that the parties shall be given copies of the reports of any experts that will testify at the hearing or that will be introduced at the hearing, shall be entitled to take the deposition of any party to the proceeding and any party’s expert witness(es), and shall be provided with the opportunity to inspect and/or test any areas that have been inspected and/or tested by the claimant;

(vi) The Referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;

(vii) The Referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties in writing;

(viii) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except to the extent permitted by California law;

(ix) The Referee’s decision may include legal and/or equitable remedies;

(x) The Referee's statement of decision shall contain a description of the grounds for the Referee's decision and shall stand as the decision of the court as authorized under Code of Civil Procedure section 644(a), and judgment may be entered thereon in the same manner as if the action had been tried by a court;

(xi) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; and

(xii) Each party retains the same appeal rights from the Referee's decision as if judgment had been entered on a trial court judge's statement of decision.

17.4 Covenant Not to Sue. Declarant, the Association, each Other Developer Party that agrees to be bound by these provisions, and each Owner covenant that each shall forbear from commencing any litigation without complying with the procedures described in this Article 17. If any party breaches the foregoing covenant, said party shall not be entitled to recover any prevailing party attorney's fees that might otherwise be recoverable and the other party may obtain an appropriate order compelling the breaching party to comply with the procedures described in this Article 17. Despite the foregoing, any party may file a lawsuit and take such other action as may be necessary in order to toll the running of any applicable statute of limitations, provided that the party shall immediately stay any further proceedings under the legal action and shall comply with the provisions of this Article 17.

## **ARTICLE 18            GENERAL PROVISIONS**

---

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

18.2 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.

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

18.4 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.

18.5 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

*[Signatures appear on following page]*

IN WITNESS WHEREOF, Declarant has executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Villas at Bella Terra effective as of the date of Recordation.

**DECLARANT:**

JETT RINK LLC, a California limited liability company

By: Sandra Eudy Family Trust

\_\_\_\_\_  
Sandra L. Eudy, Trustee

\_\_\_\_\_  
James R. Eudy, Trustee

By: The Eudy Revocable Living Trust

\_\_\_\_\_  
James R. Eudy, Trustee

\_\_\_\_\_  
Sandra L. Eudy, Trustee

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

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_



EXHIBIT "A"

