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**DECLARATION**  
  
**OF**  
  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
  
**FOR**  
  
**SOUTHWOOD GARDEN TOWNHOMES**

**P06-038**  
**MARCH 9, 2006**

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OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
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SOUTHWOOD GARDEN TOWNHOMES**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SOUTHWOOD GARDEN TOWNHOMES**

This Declaration of Covenants, Conditions and Restrictions for Southwood Garden Townhomes (the "Declaration") is made by 4G, LLC, a California limited liability company ("Declarant").

**RECITALS**

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

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

C. Declarant hereby declares that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "planned development" as that term is defined in California Civil Code section 1351(k); (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. Declarant's predecessor in interest previously encumbered Phase 1 with the Declaration of Covenants, Conditions and Restrictions for Southwood Garden Townhouses, Recorded January 15, 1986, in Book 860115, at Page 1377 of the Official Records of Sacramento County, and subsequently amended by the First Amendment to Declaration of Covenants, Conditions and Restrictions for Southwood Garden Townhouses, , Recorded November 14, 1986, in Book 861114, at Page 2092 of the Official Records of Sacramento County (collectively, the "Prior Declaration"). Declarant, as owner of all of the property subject to the Prior Declaration, may rescind the Prior Declaration. Declarant, by executing and Recording this Declaration, hereby rescinds and revokes the Prior Declaration and the Prior Annexation. Upon the Recording of this Declaration, the Prior Declaration shall have no force or effect on any portion of the Development.

E. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

F. Phase 1 consists of 65 attached Residences, each located on a separate Lot. The Residences are served by a private Common Area driveway owned and maintained by the Association. The Association is also responsible for the maintenance of the roofs and siding of the Residences within the Development, all for all landscaping located within the Common Area. If all of the Subsequent Phase Property is annexed to the Development, the Development shall consist of 98 Lots and Residences and 6 Common Area parcels.

G. Notwithstanding the anticipated development of the Overall Development in accordance with the plan of phased development contemplated by this Declaration, nothing in this Declaration shall be construed or interpreted to commit Declarant to the annexation of all or any part of the Subsequent Phase Property to this Declaration.

## **ARTICLE 1                    DEFINITIONS**

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

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

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

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

1.5 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.

1.6 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 Declaration.
- (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.

1.7 Association. "Association" shall mean the Southwood Garden Townhomes Association, a California nonprofit mutual benefit corporation, its successors and assigns.

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

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

1.10 City. "City" shall mean the City of Bakersfield, and its various departments, divisions, employees and representatives.

1.11 Common Area. "Common Area" shall mean the real property and Improvements owned or maintained by the Association. The Common Area within Phase 1 consists lots A, B, C, and D, as shown on the Subdivision Map. The Common Area consists of a roadway, parking spaces, landscape areas, and recreational facilities which include a swimming pool and tennis court. Prior to the annexation of the Subsequent Phase Property, the owners and residents of the Subsequent Phase Property shall be permitted to utilize the Phase 1 recreational facilities pursuant to the REA.

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 Sacramento County, California, and its various departments, divisions, employees and representatives.

1.14 Declarant. "Declarant" means 4G, 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" shall mean the real property more particularly described in Recital "A," together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto. If additional real property is annexed to this Declaration by the Members, such additional property shall also be part of the Development.

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.

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. "First Mortgage" shall mean any Recorded Mortgage on a Lot with first priority over other Mortgages on such Lot. A "First Mortgagee" shall include any holder (including FHLMC and FNMA), insurer (including FHA), or guarantor (including VA) of a First Mortgage on a Lot or other portion of the Development. "FHA" shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. "VA" shall mean the United States Department of Housing and Urban Development, Veterans Administration. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation. "FNMA" shall mean the Federal National Mortgage Association. Where any provision of the Governing Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval. "Eligible Mortgagee" shall refer to any Mortgagee who has requested notice from the Association related to any proposed material amendments to the Governing Documents, as further described in Section 13.7, below.

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

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

1.28 REA. "REA" shall mean the Reciprocal Easement Agreement that establishes non-exclusive easement rights for property adjacent to the Development to utilize the Common Area roadway and obligates the adjacent property to contribute funds to the Association for its cost of maintenance, repair, replacement and insurance of the Common Area roadway.

1.29 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.

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

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

1.32 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.

1.33 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.

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

1.35 Supplemental Declaration. "Supplemental Declaration" means any declaration Recorded pursuant to Section 14.4, below, which supplements this Declaration and which may affect only a portion of the Development.

1.36 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**

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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 for each Lot owned.

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

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

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

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 the 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. Neither the Association or its directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as (i) the establishment of the Association's annual financial budget, (ii) the funding of Association reserve accounts, (iii) the discharge of the Association's maintenance, repair and replacement obligations, (iv) the enforcement of the Governing Documents, and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

### **ARTICLE 3                      COMMON AREA**

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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 parcels within a Phase of the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot with the Phase 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 roadways, provided that no Owners shall be denied ingress and egress over Common Area roadways 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 recreational facilities located on the Common Area for (i) any period during which any Assessment against such Owner's Lot remains unpaid, and/or (ii) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible, provided that no Owners shall be denied ingress and egress over Common Area roadways to such Owner's Lot;

(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) REA. The right of the owners of the property adjacent to the Development to utilize the Common Area roadway in accordance with the terms of the REA;

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

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

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

(h) Maintain Signs. The right of the Association to establish, construct, maintain, repair and replace entrance signs, street signs, lights, maps, directories and other similar improvements upon the Common Area;

(i) 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

(j) Declarant's Development and Sales. 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 Lot 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. Except as expressly provided herein, 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 or any other portion of a Lot which the Association is obligated to maintain, (ii) shall make or create any excavation or fill upon the Common Area or any other portion of a Lot which the Association is obligated to maintain, (iii) shall change the natural or existing drainage of the Common Area or any other portion of a Lot which the Association is obligated to maintain, or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area or any other portion of a Lot which the Association is obligated to maintain.

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.

3.7 Mechanic's Liens. In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

## **ARTICLE 4                      USE RESTRICTIONS**

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4.1 Offensive Conduct, Nuisances, Noise. No noxious, harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use 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. Except as specifically provided in this Section 4.3, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

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

(b) Development and Sales of Lots and Residences. Declarant shall be entitled to use Lots and Residences as models, sales offices or construction headquarters for the purpose of constructing Residences and marketing Lots or Residences within the Development.

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

(b) Additional Rules. 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 County requirements. 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 the Common Area garbage dumpster.

4.11 Vehicles and Parking.

(a) Limitations on Types of Vehicles.

(i) Recreational Vehicles. No trailer, motor home, camper, boat, or other recreational vehicle shall be parked, kept or permitted to remain within the Development. The Board, in its complete discretion and upon such basis and terms as it deems prudent, shall have the power to adopt, modify and repeal Rules permitting the temporary use and parking within the Development of vehicles otherwise prohibited by the provisions of this subsection.

(ii) Commercial Vehicles. No truck, van or commercial vehicle shall be 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 reasonable 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. 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 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 be parked within the Development only as follows:

(i) Residents shall utilize their carport as the primary parking place for vehicles.

(ii) A Resident may park no more than one (1) vehicle within the Common Area parking spaces, provided the Resident is also utilizing their Residence's carport for the parking of at least one automobile.

(iii) The Board of Directors may, via revocable licenses, assign individual parking spaces to specific Units for the purpose of permitting the assigned Unit's Residents to have the exclusive right to park a vehicle within the assigned parking space. The Board may adopt Rules regarding the procedures for assigning licenses for parking, including annual or one-time fees.

(e) Common Area Guest Parking Spaces. Subject to the limitations further described in this 4.11, guests and invitees of Residents may park vehicles within the Common Area parking spaces. No vehicle of a guest shall be parked for more than 72 hours during any period of seven consecutive days in any such parking space provided that the Board may, in its discretion, permit the parking of a vehicle of a guest for such longer period as it deems advisable. The movement of any vehicle for the purposes of preventing the application of this section shall be ineffective.

(f) No Parking Areas. Except as specified in Section 4.11(d) and (e), no vehicle may be parked on any portion of the Common Area.

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

(i) Towing of Vehicles. The power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests 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) Parking Fines. The power and authority to fix and impose fines for violations of this section.

4.12 Carports. Except for the parking of permitted vehicles pursuant to Section 4.11, above, nothing shall be stored, placed or maintained within a carport.

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 nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, 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.

4.16 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.

4.17 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                    IMPROVEMENTS TO LOTS AND RESIDENCES**

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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 parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other public authorities having jurisdiction.

## **ARTICLE 6                    ASSESSMENTS AND LIENS**

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6.1     Covenant of Owner.

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

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

Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot 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) promoting the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents of the Development, (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development, (v) enforcing the Governing Documents, and/or (vi) otherwise benefitting the Owners.

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

6.5 Regular Assessment.

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

(b) Allocation of Regular Assessment. Regular Assessments shall be allocated and assessed equally among the Lots within the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the Regular Assessment.

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

(d) Increases in Regular Assessment. The Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than 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 this section 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 a Phase on the first day of the first month following the month in which the first conveyance occurs for the sale of a Lot within the Phase 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 described in California Civil Code Section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the 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 this section 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.

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 1350 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 person 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 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 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 1365. 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 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.

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

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

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

(e) Right of Redemption. Notwithstanding any provision of law to the contrary, the sale of a Lot arises from a foreclosure by the Association, is subject to the right of redemption within 90 days after the sale if the sale subject to the conditions of Section 1367.4 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.



(c) Wood-Destroying Pests and Organisms. Where any maintenance or repair of a Lot, including the Residence and other Improvements thereon, is made necessary by the presence of wood-destroying pests or organisms, the Association shall be solely responsible for such maintenance or repair, including the cost thereof, notwithstanding the fact that such maintenance or repair might otherwise be the responsibility of the Owner pursuant to Section 7.2, below. The Association's maintenance responsibilities pursuant to this section expressly alter the maintenance scheme for wood-destroying pests described in California Civil Code Section 1364 for planned developments.

(d) Association Maintenance of Fences. The Association shall maintain, repair and replace all fences around the Development or bordering any property located outside the Development consistent with maintenance plan or schedule in the Association's currently adopted reserve study. In addition, the Association shall cause the removal of any graffiti within the Development and all fences around the Development within seven (7) days of when it appears.

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

## 7.2 Owners' Responsibilities.

(a) Owner Maintenance of Lots. Except to the extent that specific maintenance, repair or replacement responsibilities with respect to the Lots are expressly and clearly made the responsibility of the Association by this Declaration, each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot, and the Residence and all other Improvements thereon. Each Owner's responsibility shall include, without limitation, the maintenance, repair and replacement of:

(i) The components and structural elements of the walls, floor and foundation, of the Residence.

(ii) Fenced-in yard areas, and, with the written permission of the Association, any approved landscaping installed within any other portion of an Owner's Lot, unless the Association agrees in writing to accept such approved landscaping for maintenance.

(iii) The exterior light fixtures on the Owner's Residence.

(iv) The surface areas of balconies and patios.

(v) Heating and air conditioning equipment.

(vi) Except for painting, the window panes, frames and hardware and doors and door frames.

(vii) Window and door screens.

(viii) Those portions of the sewer, water, electrical, cable television and other utility lines located within the Lot, except for those which are maintained by public or private utility companies or agencies.

(ix) All personal property, appliances and fixtures located within the Lot or Residence.

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

(i) General Rules of Law to Apply. Each wall and fence which is built as a part of the original construction of the Residences within the Development and placed on the dividing line between the Lots or dividing the patio area from the Common Area shall constitute a party wall. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

(iii) Weatherproofing. Notwithstanding any other provision of this section, an Owner who by his or her negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(c) Owner Responsibility for Unscheduled Painting. An Owner shall be responsible for the cost of any painting work which the Owner requests or undertakes at any time different from the Association's overall maintenance plan or schedule, as provided in Section 7.1(b)(iii), above.

(d) Owner Responsibility for Consequential Damage. Except as provided by Article 12 of this Declaration, an Owner is responsible for the cost of repair of those portions of the Owner's Residence which are required to be maintained by the Owner, those portions of Common Area which are to be maintained by the Owners, and the fixtures and personal property located on the Owner's Lot or Residence, even if the cause of the damage originates from a source maintained by the Association, unless the cause is the gross negligence of the Association or its agents. As an example, water damage to the interior of a Residence that is caused by a leak in the roof is the responsibility of the Owner even though the repair of the roof is the responsibility of the Association.

(e) 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 Mold Contamination.

(a) Association Maintenance Obligations. In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens (collectively, "mold") within the Development, the Association shall adopt and implement a mold inspection and prevention program which shall include the following steps:

(i) Inspect the Common Area not less frequently than quarterly to check for water pooling or moisture collection and for the presence of mold;

(ii) If any water pooling, moisture collection, or mold is detected, immediately take appropriate corrective action to repair the Common Area and remove the mold;

(iii) Periodically inspect the irrigation system to ensure proper water use and to correct any leaks, misdirected, or excessive watering;

(iv) Periodically inspect the ground surface around the foundations of Residences to ensure that no water is pooling near the foundations; maintain rain gutters and roof drainage systems in a clean and proper operating condition at all times; and

(v) Take such other prudent steps as may be appropriate to prevent mold and eliminate any existing mold in the Common Areas.

(b) Owner Maintenance Obligations. In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens (collectively, "mold") within the

Development, each Owner shall adopt and implement an mold inspection and prevention program which shall include the following steps:

- (i) Inspect the Residence not less frequently than quarterly to check for water leaks, moisture collection, or other breaches of the watertight integrity of the Residence and for the presence of mold;
- (ii) If any water leaks, moisture collection, or mold is detected, immediately take appropriate corrective action to repair and remove the mold;
- (iii) Maintain proper ventilation and humidity levels (particularly in bathrooms and kitchens) within the Residence to reduce the risk of mold;
- (iv) Periodically inspect the water fixtures and refrigerator condensation pans for the presence of mold;
- (v) Replace HVAC filters semiannually or as recommended by the manufacturer; and
- (vi) Take such other prudent steps as may be appropriate to prevent mold and eliminate any existing mold in the Residence.

7.8 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.

7.9 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.

7.10 Board Discretion. Except as provided in Section 7.11, 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.

7.11 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 Section of the Bylaws.

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## **ARTICLE 8                      ARCHITECTURAL CONTROL**

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8.1 Submission of Plans and Specifications. Except for Improvements made or constructed by or on behalf of the Declarant, no Improvements including without limitation landscaping, Residences, buildings, fences, walls, obstructions, balconies, screens, patio covers, awnings, or other structures of any kind, shall be commenced, located, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee as to (i) quality of workmanship and design,

(ii) harmony of external design in relation the nature and character of the Development and the Improvements thereon, and (iii) location in relation to surrounding structures, topography, finished grade elevation. Notwithstanding this section, and provided that the existing color and finish were approved by the Architectural Review Committee in the first instance, an Owner may repaint and refinish the exterior of the Improvements on his or her Lot in an identical color and finish without the approval of the Architectural Review Committee.

## 8.2 Establishment of Architectural Review Committee.

(a) 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 (5<sup>th</sup>) 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) Board as Committee. If at any time there shall not be a duly-constituted Architectural Review Committee, the Board shall exercise the functions of the Architectural Review Committee in accordance with the terms of this article.

8.3 Duties. It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. All decisions regarding proposed improvement 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 accordance with Section 10.5(c), and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to submit an application, and obtain the required approval thereof, prior to proceeding with any Improvement for which approval is required pursuant to this article. Except as provided in the last sentence of Section 8.1, any Owner who paints his or her Residence or any other Improvement without first submitting an application and obtaining the approval required by this article may be required, in the Board's discretion, to repaint the Residence or Improvement.

8.7 Fees. The Architectural Review Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors. In addition to review fees, the Architectural Review Committee may require an Owner to post a deposit for major or even minor Improvements when submitting plans to the Committee to ensure compliance with the Architectural Rules and this Declaration. The Committee shall establish a schedule or formula for determining a different amount of the deposit, and may require a separate deposit for proposed landscaping improvements. Owners acknowledge that all or a portion of any deposit may be forfeited to the Architectural Review Committee if the Owner fails to properly and timely complete works of Improvement in accordance with approved plans and specifications or if an Owner or an Owner's agents cause damage to the 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 1363(h).

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 1378(a)(5), 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 1363.05.

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 question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five 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 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**

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

9.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of (i) electric, telephone, water, gas, and sanitary sewer lines, meters, and facilities, (ii) cable lines and facilities, (iii) drainage facilities, (iv) walkways, and (v) landscaping, as shown on the Subdivision Map, and as may be hereafter required or convenient to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the 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 and Residence as required by Section 7.1(b); (iii) perform maintenance upon a Lot which is not performed by its Owner as provided by Section 7.4 and Section 7.6, and (iv) otherwise perform its obligations under this Declaration.

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

9.6 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 wilful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots or Common Area 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**

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

10.2     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 1363. 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.

(f) Common Area Claims. With respect to any decisions by the Association to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings in matters pertaining to damage to the Common Area and any warranty claims that may arise with respect to the Common Area, no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et. seq., such that from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue warranty claims or any claims or other actions using the non-adversarial proceedings for construction defects in Common Area pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. Any recovery by the Association with respect to any damage to or defect in the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

(g) Membership Consent for Certain Action. In the event that any claim or other actions brought by the Association under California Civil Code Section 895 et seq., and any successor statutes or laws or any other applicable laws, involving allegations of construction defects relating to the Common Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate a further action or procedure against Declarant without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association

conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613 and any successor statutes or laws

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 rules adopted to ensure due process and no disciplinary action may be taken without compliance with such previously adopted rules.

10.8 Alternative Dispute Resolution. The Association shall adopt a form of alternative dispute resolution procedures which shall be complied with respect to any dispute subject to such procedures.

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

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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, that satisfies all of the following conditions:

(i) Property Covered. The policy shall cover the following real and personal property:

A. Common Area. All Common Area Improvements, including the building and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building and not located within a Residence; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage; and

B. Residences. All portions of a Residence that the Association is obligated to maintain, repair or replace. In addition, to the extent the Board of Directors of the Association is required to comply with the Governmental Lender Requirements described in Section 11.7, below and Article 13, below, the policy shall cover the standard fixtures originally installed within a Residence by the Declarant and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements thereto; but excluding any personal property located in the Residence; and excluding any Improvements or upgrades to any of the foregoing to the extent the replacement cost of any such Improvement or upgrade made after completion of the original construction of the Residence exceeds the replacement cost immediately before the installation of the Improvement or upgrade.

(ii) Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent

(iii) Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in Section 11.1(a)(i) above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

(iv) Primary. The policy shall be primary and non-contributing with any other insurance policy covering the same loss.

(v) Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, plate glass,

ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

(vi) Waiver of Subrogation. The policy shall waive all subrogation rights against any Owner or occupant and their family members, guests and invitees.

(vii) Deductible. The amount of any deductible shall be paid by the Association and/or Owner pursuant to guidelines adopted by the Board.

(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 Residences, Mortgagees and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned 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 Two Million Dollars (\$2,000,000.00).

(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 insurance, flood insurance, earthquake insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than two months annual operating expenses and one hundred percent (100%) of the Association's reserve funds and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable.

11.2 Board Authority to Alter Coverage. Subject to the provisions of Section 11.7, the Board shall have the power and right to deviate from the insurance requirements contained in this article in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this article, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

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 and copy by Owners and their Mortgagees 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, any upgrades or additions to any fixtures or Improvements to the Owner's Lot and Residence, and personal property. The Association's

insurance policies will not provide coverage against any of the foregoing. Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners, the Association, and any Mortgagee of the Owner's Lot.

11.5 Trustee. All insurance proceeds payable under Section 11.1, above, 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 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.

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

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

## **ARTICLE 13                      PROTECTION OF MORTGAGEES**

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13.1 No Amendment 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.

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

(a) Any proposed termination of the legal status of the Development as a planned development.

(b) Any condemnation or casualty loss which affects either a material portion of the Development or any Residence on which there is a Mortgage held, insured or guaranteed by such requesting party.

(c) Any 60-day delinquency in the payment of Assessments or individual charges owed by an Owner subject to a Mortgage held, insured or guaranteed by such requesting party.

(d) Any default in the performance by the affected Owner of any obligation under the Governing Documents which is not cured within sixty (60) days.

(e) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(f) Any proposed action which requires the consent of a specified percentage of Eligible Mortgagees as specified in Section 13.7. Approval of a Eligible Mortgagee will be implied when such Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

13.7 FNMA, FHLMC, FHA, VA Mortgages.

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

(i) Any First Mortgage is sold or transferred to FNMA;

(ii) Any First Mortgage is sold or transferred to FHLMC; or

(iii) Any First Mortgage is FHA insured or a VA mortgage.

(b) Approval of Material Amendments. The approval of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Governing Documents. An addition or amendment to the Governing Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A change to any of the following would be considered as material:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or subordination or assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas or any other portions of the Development which the Association has a duty to maintain, repair and replace.
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the Common Area or rights to their use;
- (vi) Boundaries of any Lot;
- (vii) Convertibility of Lots into Common Areas or vice-versa;
- (viii) Expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development, other than annexations by Declarant pursuant to Article 14;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Residences;
- (xi) Imposition of any right of first refusal or similar restrictions on an Owner's right to sell, transfer or convey his or her Lot;
- (xii) A decision by the Association to establish self management when professional management has been required previously by a First Mortgagee;
- (xiii) Restoration or repair of the Development (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xiv) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs; or
- (xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

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

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

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

respect to any lease, sale, or transfer of a Lot in connection with a Mortgage foreclosure (or the acceptance of a deed-in-lieu of foreclosure) or with respect to any sale or transfer by the Mortgage holder or other party who acquired the Lot in connection with the foreclosure or deed-in-lieu.

(f) Foreclosure Eliminates Unpaid Assessments. Each holder of a First Mortgage lien who comes into possession of the Lot by virtue of foreclosure of the Mortgage or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee comes into possession of the Lot.

(g) Mortgage Priority in Case of Distribution. No provision in any Governing Document will entitle a Owner or other party to priority over any rights of the First Mortgagee on the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Lot and/or Common Area.

(h) Leasing Restrictions. No Owner shall be permitted to lease his Lot for transient or hotel purposes. No Owner may lease less than the entire Lot. Any lease or rental agreement must be in writing and be subject to the provisions of the Governing Documents.

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

(j) Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intended that the Development should comply with all of the requirements of the FHA, VA, FHLMC and FNMA. All property and liability insurance covering any portion of the Development encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Owners also agree that in the event the Development or the Governing Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by any First Mortgagee to conform such Governing Documents, or the Development, to the FHA/VA, FHLMC or FNMA requirements.

(k) Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided such waiver shall be in writing.

(l) Conflicts. In the event of conflict between any of the provisions of this article and any other provisions of this Declaration, the provisions of this article shall control.

## **ARTICLE 14                      ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

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14.1 Annexation of Subsequent Phase Property. Declarant shall have the right to annex all or any portions of the Subsequent Phase Property to the Development so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Lots within the annexing Phase. Such annexation shall not require the approval of either the Association or the Owners so long as the annexation is in substantial conformance with a detailed plan of phased development submitted to the Department of Real Estate with the Declarant's application for a Public Report for Phase 1.

14.2 Annexation of Other Property. Real property other than Subsequent Phase 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 both the Class A and Class B 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 14.4, below.

14.3 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the real property being annexed to this Declaration. The Declaration of Annexation shall identify the Lots and Common Area, if any, within the property being annexed to this Declaration, and shall be signed by the owner of the property and, in cases where Membership and Board approval are required, 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 property being annexed to this Declaration.

14.4 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the Development with the consent of the owner of the property described in the Supplemental Declaration. 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 the City as a condition of Subdivision Map approval (without the consent of the City) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

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

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

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

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

15.5 Termination of Declarant's Rights. If Declarant conveys all of its rights, title and interest in the Overall 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 enter into a contract or agreement dealing with such acts or omissions.

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

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

## **ARTICLE 16                      AMENDMENT**

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

(a) Member Approval Requirements. Except as provided in this paragraph, any amendment to this Declaration shall be approved by the vote or assent by written ballot of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, any amendment thereof will require the vote or assent by written ballot of a majority of the Total Voting Power of the Association. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

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

(c) 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.

(d) 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 Overall Development; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by

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

16.4 Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with section 2800 of the Commissioner's Regulations 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**                      **GENERAL PROVISIONS**

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17.1 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.

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

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

17.4 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.

17.5 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.

DATED: \_\_\_\_\_, 2006.

**DECLARANT**

**4G, LLC**

a California limited liability company

By \_\_\_\_\_  
\_\_\_\_\_,  
[type or print name]

By \_\_\_\_\_  
\_\_\_\_\_,  
[type or print name]

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PHASE 1**

All of the real property located in the City of Sacramento, Sacramento County, California, more particularly described as follows:

Lots 34 through 98, and lots A, B, C, and D, as shown on the Subdivision Map of Southwood Garden Townhouses, filed for Record on July 29, 1983, in Book 153 of Maps, Map No. 2, Official Records of Sacramento County.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE SUBSEQUENT PHASE PROPERTY**

All of the real property located in the City of Sacramento, Sacramento County, California, more particularly described as follows:

Lots 1 through 33, and lots E, and F, as shown on the Subdivision Map of Southwood Garden Townhouses, filed for Record on July 29, 1983, in Book 153 of Maps, Map No. 2, Official Records of Sacramento County.