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**Third Amended and Restated  
Declaration of Covenants, Conditions & Restrictions  
of Nepenthe Association**

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**Rerecorded to correct typographical errors within cross-references of article and section numbers.**

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

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**Third Amended and Restated  
Declaration of Covenants, Conditions & Restrictions  
of Nepenthe Association**

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**THIRD RESTATED AND AMENDED  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF  
NEPENTHE ASSOCIATION**

The First Restated CC&Rs of Covenants, Conditions and Restrictions of Nepenthe Association dated April 26, 1990 and recorded in Book 900523 at Page 1277, Official Records of Sacramento County, California on May 23, 1990, and the amendments thereto ("First Restated CC&Rs"), and the Second Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of Nepenthe Association dated March 21, 2002 and recorded in Book 20020327 at Page 1617, Official Records of Sacramento County, California on March 27, 2002 ("Second Restated CC&Rs") are hereby replaced by this Third Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of Nepenthe Association and amended and restated in their entirety to read as follows.

**RECITALS**

**R1.** Whereas, Nepenthe Association is the successor to Powell-Teichert Company, Meadows, which as Declarant, was the owner of certain parcels of real property located in the City and County of Sacramento, State of California subject to certain Declarations of Covenants, Conditions and Restrictions and amendments and supplements thereto, which are listed in Exhibit B ("Original CC&Rs"). These Original CC&Rs are recorded in the official records of Sacramento County identified in Exhibit B; and

**R2.** Whereas, Nepenthe Association executed the First Restated Declaration of Covenants, Conditions and Restrictions of Nepenthe Association dated April 26, 1990 and recorded on May 23, 1990 in Book 900523 at Page 1277 in the Official Records of the Country of Sacramento, State of California; and

**R3.** Whereas, Nepenthe Association executed the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Nepenthe Association dated March 21, 2002 and recorded on March 27, 2002 in Book 20020327 at Page 1617, in the Official Records of the Country of Sacramento, State of California; and

**R4.** Whereas, the above-referenced Declarations of Covenants, Conditions and Restrictions established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of five hundred and ninety (590) Lots and various common areas located in the City of Sacramento, County of Sacramento, State of California, and more particularly described in Exhibit C; and

**R5.** Whereas, the Owners of Nepenthe Association, constituting a majority of the total Ownership of the Association, desire to amend, modify, change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property described in Exhibit A;

**R6.** Therefore, the Owners of Nepenthe Association, constituting a majority of the total Ownership of the Association, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the deeds from the Declarant be and are hereby RESTATED in their entirety. In the place and stead of the repealed limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the deeds from the Declarant, the Owners hereby adopt and substitute this Third Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of Nepenthe Association; and

**R7.** It is further hereby declared that all of the real property described herein constitutes a “Planned Development” within the meaning of Section 4175 of the California Civil Code; and

**R8.** It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions and Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof; and

**R9.** It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Section 5975 of the California Civil Code and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns; and

**R10.** It is further hereby declared that each Owner, by acceptance of a deed to a Lot, will be deemed to have agreed, for any and all purposes, for Owner and Owner’s family, contract purchasers, lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration of Covenants, Conditions and Restrictions which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the Nepenthe development, either individually or as a class, Nepenthe Association or the public generally, regardless of whether the deed refers specifically to this Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

## **ARTICLE I: DEFINITIONS**

### **Section 1.1. “Architectural Review Committee” or “ARC”**

“Architectural Review Committee” or “ARC” means the committee created in accordance with Article IV of these CC&Rs.

### **Section 1.2. “Articles”**

“Articles” means the Articles of Incorporation of Nepenthe Association which are filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

### **Section 1.3. “Assessment”**

“Assessment” means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and their Lot in accordance with the provisions of Article VIII of these CC&Rs.

#### **Section 1.4. "Association"**

"Association" means Nepenthe Association, a California nonprofit mutual benefit corporation, its successors and assigns. Nepenthe Association is an "association" as defined in California Civil Code Section 4080.

#### **Section 1.5. "Association Rules"**

"Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association pursuant to these CC&Rs, as the same may be in effect from time to time.

#### **Section 1.6. "Board of Directors" or "Board"**

"Board of Directors" or "Board" means the Board of Directors or the governing body of the Association.

#### **Section 1.7. "Bylaws"**

"Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

#### **Section 1.8. "Common Area"**

"Common Area" means all the real property owned by the Association for the common use and enjoyment of the Owners and their Families, tenants and guests. The Common Area shall not include the residential Lots. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Area" shall also include any Common Facilities located thereon. The Common Areas are more particularly described in Exhibit C.

#### **Section 1.9. "Common Expense"**

"Common Expense" means the actual, estimated, or expected costs, charges, or other financial liabilities of the Association, including, without limitation: (a) all costs or charges incurred by or on behalf of the Association for the management, maintenance, administration, operation, repairs, additions, alterations or reconstruction of Common Area, Common Facilities, or any portion of the Units for which the Association has maintenance or repair obligations; (b) all costs or charges reasonably incurred to procure insurance for the protection of the Association and its Board; (c) any amounts reasonably necessary for reserves to maintain, repair or replace the Common Area or Common Facilities, any portion of the Residences for which the Association has maintenance or repair responsibility or to cover unpaid (delinquent) assessments; and (d) any other costs or charges necessary for the Board to perform its functions and fulfill its responsibilities under the Governing Documents.

#### **Section 1.10. "Common Facilities"**

"Common Facilities" means the swimming pool and apron areas (including pool furniture and related equipment), pool storage and pump house, tennis courts, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lighting fixtures, parking lots, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and intended for the use and enjoyment of the Owners.

#### **Section 1.11. “Contract Purchaser”**

“Contract Purchaser” means and refers to the party to a contract in which such party agrees to pay the purchase price for a piece of property.

#### **Section 1.12. “Contract Seller”**

“Contract Seller” means and refers to a party in a contract in which such party agrees to convey title to the purchaser after the purchase price is fully paid.

#### **Section 1.13. “County”**

“County” means the County of Sacramento, State of California.

#### **Section 1.14. “Covenants, Conditions & Restrictions” or “CC&Rs”**

“CC&Rs” means these Covenants, Conditions and Restrictions of Nepenthe Association filed in the Office of the Recorder of Sacramento County, California as they may be amended from time to time.

#### **Section 1.15. “Development”**

“Development” means all real property and the Improvements thereon which are located within the geographical area to which these CC&Rs apply, as described in Section R4 above, and which are intended to create a Planned Development as defined in California Civil Code Section 4175.

#### **Section 1.16. “Director”**

“Director” means a member of the Association’s Board of Directors.

#### **Section 1.17. “Family”**

“Family” means two (2) or more persons who live together and maintain a common household in a Lot whether or not they are all related to each other by birth, marriage or legal adoption.

#### **Section 1.18. “Governing Documents”**

“Governing Documents” is a collective term that means and refers to these CC&Rs and to the Association’s Articles, Bylaws, Association Rules and the policies and resolutions adopted by the Board and distributed to the Owners.

#### **Section 1.19. “Improvement”**

“Improvement” means an addition to or alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any Residence, outbuilding, structure, shed, driveway, parking space or parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, bridges, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and anything deemed to be a “work of improvement” as defined in Section 8050 of California Civil Code or any structure of any kind. In no event shall the term “Improvement” be interpreted to include projects which are either (a) restricted to the interior of a Residence or (b) are not visible from adjacent Common Area or Lots, so long as such projects do not

involve modifications to load bearing walls or the structural framing of a Residence, and do not interfere with other Owners' use and enjoyment of their property.

#### **Section 1.20. "Lot"**

"Lot" means any parcel of real property designated by a number on the Subdivision Map of the Development, excluding the Common Area. When appropriate within the context of these CC&Rs, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

#### **Section 1.21. "Mortgage"**

"Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably. "First Mortgage" means a mortgage having priority over all other Mortgages. "Mortgage Lien" means the lien or charge or equivalent security interest of any mortgage or deed of trust. "Mortgagor" shall refer to the trustor under a deed of trust, as well as a mortgage.

"Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. "First Mortgagee" means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage which constitutes an encumbrance upon one or more Lots first in priority of lien over all other encumbrances upon said Lot(s) securing payment of money other than these CC&Rs and liens for real estate taxes and assessments.

"Eligible First Mortgagee" means a First Mortgagee who has sent a written request for notice to the Association, stating its name and address and the Lot number or address of the Lot on which it has the Mortgage. Starting as of the effective date of these CC&Rs, the Association may maintain such information in a book entitled "Mortgagees of Lots."

#### **Section 1.22. "Owner"**

"Owner" means each person or entity who is named as an Owner on the recorded grant deed (or other valid title document) for any Lot within the Development. However persons or entities who hold an interest in a Lot merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders) are not Owners. When more than one (1) person is an Owner of a Lot, all such persons shall be Owners. However in no event shall more than one (1) vote be cast with respect to any Lot.

#### **Section 1.23. "Owner in Good Standing"**

"Owner in Good Standing" means a Member of the Association who is current in the payment of all 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 (that is, not being disciplined under Article XVI of the CC&Rs for Governing Documents violations). An "Owner in Good Standing" is an "Owner Eligible to Vote" for all purposes.

#### **Section 1.24. "Party Wall" and/or "Party Fence"**

"Party Wall" and/or "Party Fence" means any wall or fence located on a property line dividing any Lots and is commonly used by any such adjoining Lot(s)/Residence(s).

### **Section 1.25. "Proxy"**

"Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.

### **Section 1.26. "Regular Assessment"**

"Regular Assessment" means an Assessment levied on an Owner and their Lot in accordance with Section 8.2 hereof.

### **Section 1.27. "Residence"**

"Residence" means a private, single-family dwelling constructed on any Lot in the Development. Within the Development there are both attached and free-standing houses.

### **Section 1.28. "Special Assessment"**

"Special Assessment" means an Assessment levied on an Owner and their Lot in accordance with Section 8.3 hereof.

### **Section 1.29. "Special Individual Assessment"**

"Special Individual Assessment" means an Assessment made against an Owner and/or their Lot in accordance with Section 8.4 hereof.

### **Section 1.30. "Subdivision Map"**

"Subdivision Map" means the map for any phase of the Development as referenced in these CC&Rs.

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

### **Section 2.1. Elements of Separate Interest**

Ownership of each separate interest within the Development includes:

#### **(a) Lot**

A separate Lot as defined, depicted and described herein and identified by number on the Subdivision Map.

#### **(b) Nonexclusive Easements**

Nonexclusive easements appurtenant to the Lot for the use and enjoyment of the Common Area and as more particularly described in Section 2.2.

#### **(c) All Interests Subject to Governing Documents**

All of the above interests in real property shall be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in these CC&Rs, the Articles, the Bylaws, and the Association Rules.

## **Section 2.2. Owners' Right to Use and Enjoy Common Area**

Subject to the provisions of these CC&Rs, the Common Area shall be held and maintained for the use and enjoyment of the Owners of the Association, their Families, tenants, lessees, resident contract purchasers and/or guests as provided in the Governing Documents. There shall be no use of the Common Area except by the above specified persons. (See Section 2.4, below, regarding use by non-Owners.)

### **(a) Nonexclusive Easements**

Every Owner (and Owner's Family, resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the rights and restrictions set forth in this Section.

### **(b) Limitations on Nonexclusive Easements**

The Owners' nonexclusive easements for use and enjoyment of the Common Area as described above are subject to the following limitations and restrictions:

(i) The right of the Association to charge reasonable admission and other fees or to limit the number of guests of Owners who may use recreational Common Facilities situated upon the Common Area.

(ii) The right of the Association to adopt Association Rules as provided in Section 6.6(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's lessees and guests, subject to compliance with the due process requirements of Section 16.6 hereof.

(iii) The right of the Association, in accordance with these CC&Rs, and/or the Association's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property will be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness will be considered an expense of the Association for purposes of the Assessment provisions of Article VIII hereof.

(iv) The right of the Association to dedicate or transfer all or any part of the Common Area for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer will be effective unless an instrument, approved by at least two-thirds (2/3) of the voting power of the Owners, consenting to such dedication or transfer has been recorded. Furthermore, no dedication will be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(v) The non-exclusive easements granted herein will be subordinate to and will not interfere with exclusive easements, if any.

(vi) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Lot in conjunction with other Lots within the Development. The Owner of each Lot served by a sanitary sewer, water, gas, electric, telephone,

television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection will be entitled to the full use and enjoyment of the portions of the connections that service Owner's Lot.

(vii) The right of the Association to charge reasonable admission and/or other fees for the use of the Common Area or any portion thereof.

**(c) Waiver of Right to Sever**

No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Lot or Lots from the Common Area or from the Association. Each Owner, by acceptance of a deed to a Lot hereby expressly waives all rights to do so.

**Section 2.3. Persons Subject to Governing Documents**

All present and future Owners will be subject to, and must comply with the Governing Documents, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, lessees, invitees, etc.).

The mere accepting of a deed to any Lot; the entering into a lease, or contract of sale with respect to any Lot; the occupancy of any Residence; and/or the acceptance of any guest pass will constitute the consent and agreement of such Owner that each and all of the provisions of these CC&Rs, as the same or any of them may be restated from time to time, will be binding upon the persons and that the persons will observe and comply with the Governing Documents.

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

**Section 2.4. Delegation of Use**

**(a) Delegation of Use and Ownership Rights and the Leasing or Sale of Lots**

**(i) Assignment of Rights to Family Members**

Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's Family residing in the Development.

**(ii) Use by Invitees and Guests**

The invitees and guests of an Owner shall have the right to use and enjoy the Common Areas and Common Facilities within the Development, as long as the guest or invitee is in the company and supervision of the Owner. Any such guest or invitee shall be subject to the same obligations imposed on the Owner to observe the Rules, restrictions, and regulations of the Association as set forth in the Governing Documents.

**(iii) Assignment of Rights to Tenants/Lessees**

Any Owner who has leased or rented the Owner's Lot to another person(s) shall in all events be deemed to have delegated to their lessee/tenants all rights of use and enjoyment of the Common Area;



provided, however, that nothing contained in these CC&Rs is intended to restrict a nonresident Owner's right to use and enjoyment of the Common Area and Common Facilities.

**(iv) Assignment of Rights to Contract Purchasers**

Further, any Owner who has sold that Owner's Lot to a contract purchaser shall be entitled to delegate to such contract purchaser Owner's rights and privileges of Ownership in the Association, except the right to be a Director. Such Owner shall be deemed to have delegated all rights to use and enjoyment of the Common Area to a contract purchaser who has assumed occupancy of said Lot. No delegation of any Ownership rights or privileges to a non-resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.5, below. Notwithstanding any delegation, until fee title to the Lot has been transferred of record, a contract seller shall remain liable for all Assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Owner's Lot.

**(b) Association Rules**

The right of any person to use and enjoy the Common Areas shall at all times be subject to the limitations and restrictions set forth herein and in the Association Rules as promulgated by the Board from time to time pursuant to Section 6.6(a)(ii)(E) of these CC&Rs, or within the Association's other Governing Documents.

**(c) Discipline of Lessors**

**(i) Lessor's Responsibility for Tenant**

An Owner who leases their Lot to any person or entity shall be responsible for assuring compliance by the lessee/tenant and any other occupants, guests, licensees or invitees with the provisions of the Governing Documents, including but not limited to, all easements, reservations, assessments, liens and charges created in accordance with these CC&Rs, all as amended and supplemented from time to time during the lessee/tenant's occupancy and use of the Lot.

**(ii) Fine or Penalties for Violations of Governing Documents by Tenants**

Subject to subsection (d), below, in the event that any lessee/tenant fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of fines and penalties against the Owner. Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment as defined in Section 8.4, below.

**(iii) Due Process Requirements for Disciplinary Action**

Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to take any disciplinary action against an Owner-lessor on account of the misconduct of the Owner's lessee/tenant unless and until the notice and hearing requirements of Article XVI of these CC&Rs have been fulfilled, and the Owner-lessor has been given a reasonable opportunity to obtain the compliance of their lessee/tenant with the Governing Documents or to terminate the lease.

**(d) Discipline of Lessees; Exercise of Eviction Authority**

Whether or not such right is stated in any rental agreement, every Owner who rents their Lot automatically grants to the Association the right to determine a lessee/tenant's default under the Governing Documents and of terminating the lease/tenancy and evicting the lessee/tenant for such default. If the Board brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment (see Section 8.4 below) for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from Section 1161 of the California Code of Civil Procedure and Section 5980 of the California Civil Code and shall only arise if the lessee/tenant's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.

**Section 2.5. Obligations of Owners**

Owners of Lots within the Development shall be subject to the following:

**(a) Duty to Notify Association of Tenants and Contract Purchasers**

Each Owner shall notify the manager of the Association of the names of any contract purchaser or tenant of the Owner's Lot and shall furnish to the manager a fully conformed copy of the executed lease or contract and any amendments thereto upon written request by the Association. Each Owner, contract purchaser or tenant shall also notify the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Common Area and the relationship that each person bears to the Owner, contract purchaser or tenant.

**(b) Contract Purchasers**

A contract seller may delegate the seller's Owner rights, including voting rights, pursuant to Subsection 2.4(a)(iv), above. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

**(c) Notification Regarding Governing Documents**

(i) As more particularly provided in the California Civil Code Section 4525, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association (or its managing agent) shall, within ten (10) days of the mailing or delivery of a request for the information described in Subsection (c)(i) above, provide the Owner with

copies of said documents. The Association (or its managing agent) shall be entitled to impose a fee for providing copies of those documents equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association (or its managing agent) may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Lot.

**(d) Payment of Assessments and Compliance with Association Rules**

Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and their Lot and shall observe, comply with and abide by any and all Association Rules set forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

**(e) Responsibility for Conduct of Others**

Each Owner shall be fully responsible for informing members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

**(f) Indemnification for Damage & Injury**

Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance). Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Development due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees, unless the injury or damage incurred is fully covered by insurance.

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

No decision resulting in the liability of an Owner pursuant to this subsection shall be reached without providing such Owner with notice and hearing pursuant to Subsections 16.6(f) and (g).

**(g) Discharge of Assessment Liens**

Each Owner shall discharge any Assessment lien within five (5) days that may hereafter become a charge against their Lot.

**(h) Joint Ownership of Lots**

In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (h) shall apply to all obligations, duties and responsibilities of Owners as set forth in these CC&Rs, including, without limitation, the payment of all Assessments.

**(i) Prohibition on Avoidance of Obligations**

No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Lot, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and their Lot pursuant to these CC&Rs. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

**(j) Obligation to Permit Entry by Association and/or Adjacent Owners**

Each Owner shall be obligated to permit the Owners of adjacent Lots or the representatives of such adjacent Owners to enter the Owner's Lot for purposes of performing installations, alterations or repairs to mechanical or electrical services which are reasonably necessary for the use and enjoyment of their Lot, provided that the adjacent Owner furnishes the Owner whose Lot is being entered upon with at least twenty-four (24) hours' written notice of their intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform their use and schedule their entry in a manner that respects the privacy of the persons residing within the Lot and the convenience of the Owner of the Lot. Each Owner shall also honor the right of the Association and its agents to enter Lots as provided in Section 6.5(b) of these CC&Rs.

**Section 2.6. Transfer or Conveyance of Lot Terminates Obligations**

Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under these CC&Rs. The voluntary conveyance of a Lot to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments that were levied against said Lot prior to the subject transfer.

**ARTICLE III: RESTRICTIONS & USE OF PROPERTY**

**Section 3.1. Occupancy and Use**

**(a) Occupancy**

No more than two (2) persons per bedroom, plus one (1) additional person per Residence, not including temporary guests, may reside in any Lot. In no event shall a Lot be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

**(b) Restriction on Businesses**

Each Lot shall be used exclusively for residential purposes except as provided in this section. No business of any kind shall be established, maintained, operated, permitted or conducted within the Development without the prior written approval of the Board, except home offices and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances provided, however, that:

(i) there shall be no external evidence of such business/home office (i.e., no increased pedestrian and/or vehicular traffic, no signs, and no activities which are apparent or detectable by sight, sound or smell from outside of the Lot);

(ii) no person, employee or assistant shall be employed in the Residence or dispatched from the Residence;

(iii) there shall be no published advertising of the business/home office or Lot address in the telephone book, newspaper, internet, electronic media, or other media of any kind; and

(iv) such activities do not increase the Association's insurance obligations and/or premiums, and/or such activities are not inconsistent with the residential nature of Development.

**Section 3.2. Rentals and Leases**

As used in this Article, the terms "lease" or "rental" shall mean any and all agreements, including, but not limited to leases, and/or rental agreements, for the occupancy of any Lot. Any Owner who wishes to lease the Owner's Lot must comply with all of the provisions of Sections 2.4, 2.5, this section, and any applicable Association Rules.

**(a) All Leases to be in Writing**

All leases for a Lot within the Development shall be in writing.

**(b) No Short-Term Leases/Rentals/Time Sharing and No Hotel Services**

No Owner or contract purchaser shall be permitted to lease a Lot for a period less than 180 (one-hundred-eighty) days; month-to-month terms after the initial 180 days are permissible. No subleasing of any lot shall be permitted except with the written approval of the Board. No Owner, contract purchaser, tenant or lessee shall be permitted to lease a Lot for transient, hotel or time sharing purposes. Any agreement, plan or arrangement under which the right to use/occupy the Lot that rotates among various persons on a periodically recurring basis and/or rental which includes providing the occupants with customary hotel services such as room service for food and beverage, maid service, laundry and linen service or bellboy service is prohibited.

**(c) All Lessees and Tenants Subject to Governing Documents**

Any lease or rental of any Lot within the Development shall be subject to all provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner shall be responsible for compliance by such Owner's tenant(s) or lessee(s) with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Lot. The failure of any tenant or lessee to comply with the terms of

the Governing Documents shall be a default under the lease/rental agreement and a failure to perform a condition and covenant of the lease/rental agreement.

**(d) Owner's Responsibility**

Each Owner leasing a Lot pursuant to this Section shall be strictly responsible and liable to the Association and its collective Owners for the actions of such Owner's tenant(s)/lessees in or about all Lots and the Common Area and for each tenant/lessee's compliance with the provisions of the Association's Governing Documents.

**Section 3.3. Parking and Vehicle Restrictions; Use of Private Streets**

As long as applicable ordinances and laws are complied with, including but not limited to California Vehicle Code Section 22658 or comparable superseding statute, the Association may cause the removal of any vehicle anywhere within the Development which is in violation of the Association's vehicle and parking restrictions. No portion of the Development may be used for the repair, construction, reconstruction and/or maintenance of any vehicle.

**(a) Parking Restrictions**

Except within areas designated by the Association, there shall be no parking, keeping and/or storage outside of garages within the Development or streets, of trailers of any kind, vehicles and trucks larger than a medium duty, Class 4 truck as defined by the Department of Transportation Federal Highway Administration, mobile homes, non-operational vehicles, golf carts and/or recreational vehicles, including motorhomes, trailers, campers, boats or similar vehicles. No vehicle shall be parked or left in the alleyways or on the common driveways behind the Residences, except for the active and immediate loading and unloading of the vehicle. Service contractors may not leave or park their service vehicle(s) in the common driveways or alleyways without the express written consent of the Board or its authorized property manager.

Garages are to be used for the parking of standard passenger vehicles and trucks not to exceed Class 4 trucks as defined by the Department of Transportation Federal Highway Administration and shall not be converted to living quarters or workshops or used for the storage of boats, campers, or recreational vehicles which will preclude the parking of Owner's authorized vehicles within the garage. Personal property other than authorized vehicles shall not be stored in garages, if such storage will result in the parking of vehicles on streets within the Development without a parking permit issued by the City of Sacramento or by the Association.

**(b) Guest parking**

Designated guest parking areas within the Common Areas are to remain open for use by guests only and are not to be used by Owners or other residents, either permanently or temporarily, for the parking of any vehicles, boats, or trailers.

**(c) Non-operational Vehicles**

All vehicles parked within the Development shall have a license plate and exterior evidence of valid California vehicle registration. No emission of unreasonable levels of exhaust fumes and/or noise and/or the parking, keeping and/or storage of dilapidated, non-operational and/or disabled vehicles shall be permitted within the Development.

**(d) Towing**

The Association shall have the authority to tow, at the Owner's expense, any vehicle parked or stored in violation of this Section. The Association shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

**Section 3.4. Household Pets and Animals**

(a) No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred, or kept on any Lot or portion of the Development; except a reasonable number of ordinary household pets such as dogs, cats, fish or birds may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times.

(b) Notwithstanding the foregoing, no pets may be kept within the Development that result in annoyance or nuisance to the Owners. Dogs are not allowed on the Common Area except while on a leash which is held by a person capable of controlling it. Owners shall prevent their pets from soiling any portions of the Common Area or any Owner's Lot, and are responsible for the immediate removal of any pet wastes. No animal may be left chained or otherwise tethered in front of a Lot or in the Common Area.

(c) Each Owner or person bringing or keeping a pet within the Development shall be responsible for the conduct of their pet, and absolutely liable to other Owners and their invitees for the any damage to persons or property cause by any pet brought or kept within the Development by such person. The Association and its Board, other Owners, and Association management shall have no liability with respect to the behavior of or damage caused by any pets.

(d) The Board shall specifically have the power to prohibit the keeping or maintenance of any animal which, in the opinion of the Board, after notice and hearing, is deemed by the Board to constitute a nuisance or threat to the safety of the occupants of the Development in the sole and exclusive opinion of the Board.

**Section 3.5. Signs and Flags**

Except as otherwise provided by law, no signs of any kind or for any purpose whatsoever, including advertising signs or billboards will be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any reasonably sized signs required by legal proceedings and a single "For Rent", "For Lease" or "For Sale" or "Security Notice" sign of reasonable dimensions. Signs permitted under this Section 3.5, may be placed in Residence windows but they shall not be placed in Common Areas, except that a "Security Notice" sign shall be permitted adjacent to the entrance to a Residence.

Pursuant to Civil Code Section 4705, nothing in these CC&Rs will be construed to limit or prohibit an Owner from displaying the United States flag on or in the Owner's Lot. Displaying the United States flag means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

**Section 3.6. Garbage and Trash**

All trash, garbage, accumulated plant waste material, refuse, rubbish and debris will be kept only in covered sanitary containers and/or the appropriate recycling receptacle enclosed within each Lot. No



Owner or resident will permit or cause garbage, trash or other waste to be kept upon any portion of the Development, except in said containers. Trash containers shall be stored, covered, behind a fence or within an enclosed garage or other barrier so as not to be visible from the street, except for brief periods when they are placed at the side of the street for pickup.

Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) will be removed from the Development to a public dump or trash collection area by the Owner or lessee at their expense. The Association will be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section 3.6.

### **Section 3.7. Sports Apparatus**

Basketball standards, hoops, backboards, and/or other fixed sports apparatuses are prohibited in the Development except if they cannot be seen from the Common Area. The Board shall have the right to approve any sports apparatus within the Common Area as it may deem appropriate and non-intrusive or unobjectionable to Owners.

### **Section 3.8. Tennis Courts**

The tennis courts shall be used for playing tennis, except as the Board may otherwise reasonably decide. All other uses of the tennis courts are prohibited unless approval from the Board is requested in writing, and such approval is granted in writing.

### **Section 3.9. Burning**

There shall be no exterior fires whatsoever except contained fires located only upon Lots and contained within approved receptacles designed for such purpose.

### **Section 3.10. Security Devices**

Security devices, including cameras, may be installed on the Residences with the ARC's and Board approval. In addition to the requirements of Article IV, Owners must also comply with the requirements of this section. A request to install security devices must be sent in writing to the ARC and must contain information regarding the type of devices, location of devices, method of installation, and any other pertinent information that will allow the ARC to make a decision regarding approval. In the event the ARC needs additional information, the ARC or the Board may request additional information from the applicant and may request an inspection of the outside of the Residence. Failure to obtain approval from the ARC and Board prior to installation of security devices on the outside of a Residence may result in fines or other penalties and removal of the devices.

### **Section 3.11. Antennae; Satellite Dishes**

No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixture or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

#### **(a) Authorized Antenna Defined**

An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter (i.e. 3.28 ft.) or less in diameter, (ii)



and antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, including multichannel multipoint distribution service, and is one (1) meter (i.e. 3.28 ft.) or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), (iii) above.

**(b) Authorized Antenna Requirements**

Owners are prohibited from installing any antenna on the exterior of a Residence of any purpose except for an "Authorized Antenna" which may be installed so long as the proposed location for such installation is reviewed by Architectural Review Committee before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Review Committee may require that the location of the Authorized Antenna may be moved so long as such review by the Architectural Review Committee does not: (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

**(c) Additional Antenna Restrictions**

The Association may adopt additional restrictions on installation or use of Authorized Antenna on an Owner's Lot as part of the Association's rules and regulations so long as such restrictions do not: (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception. The Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety-related reason established by the Association.

Nothing herein shall be construed to restrict in any manner the Board's right to authorize a cable television franchise or other provider of similar services to provide cable television, radio or other similar services to the Development.

**Section 3.12. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling**

The following activities are prohibited and shall not be performed on, upon or within the Development:

(a) Activities which are nuisances, or which cause unreasonable embarrassment, disturbance or annoyance to residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or which shall, in any way, interfere with residents' use and enjoyment of their Lots and/or the Common Area and facilities thereon; provided, however, that the Board may decline to involve itself or the Association in disputes concerning adjacent Lot Owners if such dispute does not involve the Common Area or any other Owner or resident of the Development and if the Board determines that in view of the possible expenditure of time, effort and costs involved in attempting to resolve the dispute, it would not be in the best interests of the Association to become involved;

(b) Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

(c) Activities which are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development;

(d) No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Development without the approval of the Board;

(e) Activities which will obstruct the sidewalks, streets or Common Area within the Development or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs. Unless otherwise permitted in the Association Rules, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's Lot;

(f) Activities or conditions which would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

(g) Any excavation, improvement or work which in any way alters any Common Area or Common Facility from its existing state on the date such Common Area or Common Facility was originally constructed shall not be made or done except by the Association and, then, only in strict compliance with the provisions of the Governing Documents;

(h) Any further subdivision of a Lot; and

(i) No Owner or other resident shall permit noise, sound(s) or sight(s) which would unreasonably disturb another's enjoyment of his or her Lot and/or the Common Area, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, power tools, or leaf blowers.

### **Section 3.13. Clotheslines**

No exterior clotheslines shall be erected or maintained and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area. Clotheslines shall be permitted in an Owner's patio area so long as the line and its laundry are not visible above the wall or fence enclosing the patio when viewed from ground level.

### **Section 3.14. Owner Improvements**

No Owner may make any alterations or modifications to the exterior of the Improvements on their Lot without the prior written consent of the Association. Furthermore, no structural alterations to the interior of the Lot or the Common Area surrounding any Lot, including the remodel of all or any part of any wall, may be made and no plumbing or electrical work within any bearing or common walls may be performed by any Owner without the prior written consent of the Association. No Owner may undertake any activity or work with respect to the Owner's Lot that will impair the noise-carrying capacity, structural soundness or integrity of the Common Area and/or another Lot.

### **Section 3.15. Regulation of Owner Activity**

In order to promote the Owners' use and enjoyment of the Development and the aesthetic and recreational purposes thereof, the Board shall be entitled to adopt, repeal or amend Association Rules governing use of the Common Area and individual Lots and/or which seek to promote the health, safety and quality of life of Association Owners and other residents of the Development, and to impose appropriate fines or other penalties for their violation.

### **Section 3.16. Use of Common Area**

No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area without the express written approval of the Grounds Committee and the Board. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area, without express written approval of the Association. No personal property of any type may be stored within the Common Area except upon written approval of the Board or as provided in the Association Rules. Seasonal decorations may be maintained pursuant to a written policy adopted by the Board. Any structure, personal property or landscaping placed within the Common Area in violation of this Section may be removed by the Association without notice, and the costs for the removal and disposal of such structure, personal property or landscaping shall be charged to the Owner responsible therefor as a Special Individual Assessment.

### **Section 3.17. Owner Liability for Damage to Common Area**

The Owner of each lot shall be liable to the Association for any damages to the Common Area and/or Improvements thereon caused by such Owner, or any occupant of their Lot or guest, tenant, or invitee. An Owner's liability shall be established only after notice to the Owner and hearing before the Board.

### **Section 3.18. Termination of Mechanics' Lien Rights and Indemnification**

No labor performed or materials furnished to and incorporated in a Lot or Residence with the consent or at the request of the Owner thereof, Owner's Family, lessees, tenants, or contract purchasers, or any of their agents, contractors, or subcontractors, shall be the basis for filing a lien against the Lot of any other Owner if said Owner has not expressly consented to or requested the same, or against the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Lot or Residence, at such Owner's request or with his or her consent. The provisions of this section shall not apply to any labor performed or materials furnished at the request of the management agent or the Board. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Lot, the amount necessary to discharge any such lien, including all costs incident thereto.

### **Section 3.19. Variances**

Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article III, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by these CC&Rs. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article IV of these CC&Rs for the granting of architectural variances.

### **Section 3.20. Enforcement of Property Use Restrictions**

#### **(a) Voluntary Compliance**

The objective of these CC&Rs shall be to promote and seek voluntary compliance by Owners and other residents with the environmental standards and property use restrictions contained herein. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Lot or user of the Common Area shall comply with the provisions of the Governing Documents. In the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 16.6 hereof, the Owner responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the non-complying condition, request that the Owner correct the condition within a reasonable time specified in the notice.

#### **(b) Board's Discretion Not to Pursue Enforcement**

The Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any enforcement action, including taking into consideration the potential benefits to the Association (and/or its Owners) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to proceed with an enforcement action, the Board shall notify, in writing, any Owner(s) who have requested enforcement by the Association.

## **ARTICLE IV: ARCHITECTURAL REVIEW AND APPROVAL**

### **Section 4.1. Architectural Review Committee Approval of Improvements**

#### **(a) Approval Generally**

Before commencing the construction or installation, of any improvement (as defined in subparagraph (b), below) within the Development, the Owner planning such improvement must submit to the Association's Architectural Review Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans satisfying the requirements of Section 4.6, below. Unless the Committee's approval of the proposal is first obtained and that approval is confirmed by the Board (see Section 4.7, below), no work on the improvement shall be undertaken. The Architectural Review Committee shall base its decision to approve, disapprove or conditionally approve the proposed improvement on the criteria described in Section 4.6, below. All Architectural Review Committee action shall be subject to the ultimate approval of the Board of Directors as specified in Section 4.7, below.

#### **(b) Definition of "Improvement" for ARC Review Purposes**

The term "Improvement" for ARC review purposes includes, without limitation the construction, installation, alteration or remodeling of the exterior of any buildings, exterior walls, fences, landscaping, skylights, solar tubes, solar heating equipment, spas, antennas, utility lines or any structure of any kind. The term "landscaping", as used herein, shall not include landscaping within any patio area.

### **(c) Modifications to Approved Plans Must Also Be Approved**

Once a work of improvement has been duly approved by the Architectural Review Committee and the Committee's approval has been affirmed by the Board, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Architectural Review Committee, in its discretion, may order the Owner, his or her contractors and agents to cease working not only on the modified component of the improvement, but also on any other affected component.

In the event that it comes to the knowledge and attention of the Association, its Architectural Review Committee, or the agents or employees of either, that a work of improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 4.12, below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of improvement until such time as proper Architectural Review Committee review and approval is obtained.

### **Section 4.2. Committee Membership**

The Architectural Review Committee shall be composed of three (3) or more Owners of the Association appointed by the Board. In selecting members for the Architectural Review Committee, the Board of Directors shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. Committee members shall serve for one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Architectural Review Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto.

### **Section 4.3. Duties**

It shall be the duty of the Architectural Review Committee to consider and act upon the proposals and plans submitted to it pursuant to these CC&Rs, to adopt Architectural Rules pursuant to Section 4.5, below, to perform other duties delegated to it by the Board of Directors and to carry out all other duties imposed upon it by these CC&Rs.

### **Section 4.4. Meetings**

The Architectural Review Committee shall meet from time to time as necessary to properly perform its duties hereunder. Notice of meetings shall be provided in accordance with the Bylaws. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee and the Committee shall keep and maintain a written minutes of all actions taken.

The Owner-applicant shall be entitled to appear at any meeting of the Architectural Review Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose Development may be affected by the proposed improvement (in terms of the view, noise or other considerations) shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Architectural Review Committee meetings shall be communicated before the date of the meeting to any Owner-applicant whose application is scheduled to be heard.

#### **Section 4.5. Architectural Rules**

The Architectural Review Committee may, from time to time and with approval of the Board of Directors, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for Architectural Review Committee review, including the required content of improvement plans and specifications, (b) guidelines for architectural design, placement of any work of improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Development, and (c) the criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents (see Section 4.14, below). Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by these CC&Rs. In the event of any conflict between the Architectural Rules and these CC&Rs, the provisions of the CC&Rs shall prevail.

#### **Section 4.6. Basis for Approval of Improvements**

When a proposed work of improvement is submitted to the Architectural Review Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with the requirements of the Architectural Rules pertaining to the content and procedures for submittal of plans and specifications;

(b) The Owner's plans and specifications: (i) conform to these CC&Rs and to the Architectural Rules in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an improvement that is in harmony with the external design of other structures and/or landscaping within the Development; and (iii) will not interfere with the reasonable enjoyment of any other Lot Owner of his or her property, including, without limitation, the other Owner's rights to scenic and solar access free of unreasonable obstructions;

(c) The proposed improvement will not violate building codes or similar applicable governmental restrictions imposed by the City of Sacramento; and

(d) The proposed improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development for the project and the purposes of these CC&Rs.

While it is recognized that the Architectural Review Committee's determination to approve or disapprove an improvement will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the improvement project, the harmony of the proposed improvement's exterior design, finish materials and color with that of other existing structures, and the proposed location of the improvement in relation to the existing topography, finished grade elevations, roads, Common Areas and other existing structures. The Committee shall also be entitled to determine that a proposed improvement or any component thereof is unacceptable when proposed on a particular

Lot, even if the same or a similar improvement/component has previously been approved for use at another location if factors such as drainage, topography, unusual site conditions, visibility from roads, Common Areas or other Lots, or prior adverse experience with the product or design of the improvement mitigate against erection of the improvement or use of a particular component within the improvement on the Lot involved in the Owner's submittal. The Board's action to affirm or overrule the Committee's recommended action with respect to a proposed improvement shall also be based on the foregoing criteria.

#### **Section 4.7. Time Limits for Approval or Rejection**

With the exception of plans for the installation of solar energy systems which are governed by California Civil Code Section 714, within thirty (30) days after submission of plans and specifications satisfying the requirements set forth in the Architectural Rules, the Architectural Review Committee shall make its recommendations to the Board regarding the proposed improvement. The matter will then be calendared for action by the Board at its next regularly scheduled meeting. Following action by the Board, management shall provide the Owner-applicant with either written notice of the Board's approval or disapproval or with written suggestions of changes required for as a condition for approval if the Board recommends further changes or modifications, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Committee, which approval it shall not unreasonably withhold so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Owner-applicant within sixty (60) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been denied by the Committee and the Board as submitted. In such case, the Owner can request that the matter be placed on the Board agenda for reconsideration at the next regularly scheduled Board meeting.

In approving a request for construction of an improvement, the Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions. The Committee shall endeavor to resolve such issues with the Owner prior to the time scheduled for Board action so that the Board's decision need not be qualified.

#### **Section 4.8. Employment of Architect or Engineer**

If at any time the Architectural Review Committee determines that it would be in the best interests of the Association and its Owners for an applicant to employ an architect, licensed building designer or engineer to design or review any proposed improvements or component thereof, the Committee shall advise the applicant in writing of its determination whereupon all plans and specifications so designated by the Architectural Review Committee must thereafter bear appropriate evidence of such professional preparation or review at the Owner's expense.

#### **Section 4.9. Proceeding with Work**

Upon receipt of both written approval from the Architectural Review Committee and confirmation of that approval by the Board, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction pursuant to said approval. In all cases, work on an approved improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this Article IV, shall be deemed revoked unless the Board, upon written request of the Owner prior to the expiration of the initial one year period, extends the time for commencement or completion. 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 and that the Owner has a bona fide intention and ability to complete the improvement project within the time specified in the extension request.

#### **Section 4.10. Failure to Complete Work**

Unless the Owner has been granted an extension of time to complete the project by the Architectural Review Committee, construction, reconstruction, refinishing or alteration of any such improvement must be complete within one year after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

If the Owner fails to comply with this Section, the Architectural Review Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 4.11(c) and (d), below, as though the failure to complete the improvement was in noncompliance with approved plans.

#### **Section 4.11. Inspection of Work by Architectural Review Committee**

Inspection of the work relating to any approved improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Architectural Review Committee shall have the right to inspect the job site to confirm that the work of improvement is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of improvements for which Architectural Review Committee approval is required under this Article IV, the Owner shall give the Architectural Review Committee a written notice of completion.

(c) Within forty five (45) days thereafter, the Architectural Review Committee, or its duly authorized representative, may inspect the improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Architectural Review Committee finds that the improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the forty five (45) day inspection period the Committee shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Association and its Architectural Review Committee shall have the rights and remedies set forth in Section 4.12 below.

(d) If for any reason the Architectural Review Committee fails to notify the Owner of any noncompliance within forty five (45) days after receipt of the Owner's notice of completion, the improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Committee with respect thereto.



#### **Section 4.12. Enforcement**

(a) In addition to other enforcement remedies set forth in these CC&Rs, the Board of Directors and the Architectural Review Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by the Board and/or the Architectural Review Committee and may enforce such architectural control by any proceeding at law or in equity. In addition, the Board and the Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee and the Board, or if it does not conform to the plans and specifications submitted to the Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(b) If the Owner fails to remedy any noncompliance for pending construction of which notice has been given within thirty (30) days from the date of such notification, the Architectural Review Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is issued by the Board to the Owner, to the Architectural Review Committee and, in the discretion of the Board, to any other interested party.

(c) At the hearing, the Owner, a representative(s) of the Architectural Review Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a Special Individual Assessment against such Owner.

(d) This approval by the Architectural Review Committee and the Board of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Architectural Review Committee and the Board under these CC&Rs, or any waiver thereof, 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 by the same or some other Owner. Different locations for improvement, the size of the structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

#### **Section 4.13. Emergency Action and Authority**

The Architectural Review Committee shall have the authority, with prior notice to the President of the Board of Directors and the property manager, to review and approve certain works of improvement required to protect the health, safety or welfare of an Owner or Resident, or the Development, under Standards and Practices adopted by the Committee and approved by the Board.

(a) Any such emergency work of improvement approved by the Architectural Review Committee shall be presented to the Board at its next regularly scheduled meeting at which time the Board may ratify, modify or reject such approval.

#### **Section 4.14. Variances**

The Board, in its sole discretion, shall be entitled to allow reasonable variances in any procedure specified in this Article IV, or in any land use restrictions specified in Article III, to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships to Owner-applicants, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under these CC&Rs, the Board must conduct a public hearing on the proposed variance after giving prior written notice to all Owners residing within one hundred (100) feet of the subject Lot. Said notice shall also be posted in the Association's principal office within the Development. The notice shall be posted and mailed to the interested Owners at least fifteen (15) days prior to the date when the Board is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the 15-day comment period has elapsed.

(b) The Board 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 proposal allows the objectives of the violated requirements to be substantially achieved despite noncompliance; or (ii) that the variance relates to a required 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 nuisance to or be a material detriment to any other Lot or Common Area within the Development.

#### **Section 4.15. Estoppel Certificate**

Within thirty (30) days after written demand is delivered to the Architectural Review Committee by any Owner who has completed a work of improvement, and upon payment to the Association of a reasonable fee (as established from time to time by the Board), the Architectural Review Committee shall record an estoppel certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with these CC&Rs, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the noncomplying improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Association's estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

#### **Section 4.16. Limitation on Liability**

Neither the Association, its Architectural Review Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, specifications; or (c) the execution and filing of a Notice of Noncompliance pursuant to Section 4.11, above, or an estoppel certificate pursuant to Section

4.15, above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

#### **Section 4.17. Compliance With Governmental Regulations**

Review and approval by the Architectural Review Committee of any proposals, plans or other submittals pertaining to improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Lot Owner who desires to construct, install, or modify the improvement.

#### **Section 4.18. Appeals**

Appeals from decisions of the Architectural Review Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Architectural Review Committee. The Association Rules shall contain procedures to hear and process appeals pursuant to this Section.

### **ARTICLE V: MAINTENANCE RESPONSIBILITIES**

The Development shall be maintained in an attractive, safe, and sanitary condition and in a good state of repair.

#### **Section 5.1. Association Maintenance Responsibility**

##### **(a) Common Area**

Except as is provided in this Article, the Association will be solely responsible for all maintenance, repair, and replacement within the Common Area, including all facilities, Improvements and landscaping thereon. Without limiting the generality of the foregoing, the Association must maintain, repair, and replace the following components that are not located within the Lots: walkways; concrete surfaces, the parking lots; any road, or surface upon any portion of Common Area designated on a Subdivision Map as a private road or parking area; brick and mortar components (excluding chimney components); utility facilities, excluding those utility facilities maintained by utility companies or agencies; signs that the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests; landscaping; lighting fixtures; open spaces; swimming pools; swimming pool apron areas; swimming pool equipment; spas; tennis courts; and the Common Area perimeter fences and walls, which consist of fences and walls that separate Common Area and property outside of the Development and patio fences separating the Common Area and Lots.

The Association shall maintain the underground sewer, water, sprinkler systems and electrical lines, in the Common Area, excluding under and within Residences, foundations of Residences, and driveway aprons; provided, however, that the Association shall not be responsible for the risers and connecting lines between the underground service lines and the individual Residences or for any sprinkler lines or systems within an Owner's patio area.

Only the Association may construct, reconstruct, alter, or maintain any Improvement upon, or create any excavation or fill or change the natural or existing drainage of any portion of the Common

Area. Only the Association may remove any vegetation from or plant any vegetation on the Common Area.

**(b) Right of Entry**

Pursuant to Section 6.5(b), the Association may, when necessary, enter any Lot to perform the Association's obligations, including making necessary repairs that an Owner has failed to perform under Section 5.2, below, and/or to perform work because a Lot has become a nuisance or fire or safety hazard, and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(c) Lot Improvements**

The Association shall provide exterior maintenance, repair and replacement upon each Lot and Residence which is subject to Assessment hereunder, as follows:

(i) Paint, stain, repair, replace, and care for the exterior building surfaces of all Residences including roofs (down to and including the sheathing, limited to roofing materials and water proofing), vehicle garage door exterior surfaces (paint only), window trim (paint only), gutters, downspouts (including cleaning), exterior walls (limited to wood siding, trim and water proofing materials), and; provided, however, that the Association shall not be responsible for the repair and replacement of exterior doors (Association is only responsible to maintain and paint exterior surfaces of exterior doors), screen doors, exterior lighting fixtures, hardware, windows or sliding glass doors, glass surfaces, or any brick and mortar components, including chimney components, on the Lots.

(ii) Replace and care for trees, shrubs, grass, walks, and other landscaping improvements, except for plantings and improvements located within enclosed patio areas on Lots; and

The Association is responsible for the repair and maintenance of their Lot/Residence as may be occasioned by the presence of wood-destroying pests or organisms, including, but not limited to, termites and dry rot, for components that the Association is otherwise responsible to maintain, repair, and replace.

**Section 5.2. Owner Maintenance Responsibilities**

**(a) Common Area**

An Owner is responsible and liable for the costs incurred in order to repair or replace any portion of the Common Area that is due to the willful or negligent act or omission of the Owner, unless the repair or replacement is covered by the Association's insurance and the Association submits an insurance claim. If the repair or replacement is covered by the Association's insurance and the Association submits a claim, then the Association is only responsible to the extent of such insurance coverage and the offending Owner is responsible and liable for the remainder of the costs, including the insurance deductible.

**(b) Lots/Residences**

Except as specifically provided in Section 5.1, above, each Owner shall be responsible for the maintenance, replacement and repair of his or her Residence and Lot, including without limitation the glass surfaces, glass doors, windows, screens and screen doors, other exterior doors, window fixtures, any hardware, improvements within enclosed patio areas, concrete surfaces within the fenced or enclosed

areas on the Lot, the interior of his or her Residence, the plumbing, electrical, heating and air conditioning systems within his or her Lot, and all frame and structural components of the Residence. The Owner shall also be responsible for the maintenance of all of the exterior landscaping located within patio fences on his or her Lot. Owners shall be responsible for the repair, rebuilding, replacement, or loss of all items above as a result of damage to them regardless of the cause, and irrespective of the amount of available proceeds from any insurance policy.

Owners may not impair the structural integrity of any Residence, Common Area and/or Lot/Residence or increase the noise-carrying capacity of floors, walls and/or ceilings. Any maintenance, repair, or replacement must conform to the architectural design of the Development or of any alternative design approved by the Association in advance and in writing.

Each Owner is responsible for the repair and maintenance of their Lot/Residence as may be occasioned by the presence of wood-destroying pests or organisms, including, but not limited to, termites and dry rot, for components that the Owners are otherwise responsible to maintain, repair, and replace.

Each Owner is responsible for the maintenance, repair or replacement of Residence interiors, furnishings, utility installations, appliances, and fixtures which service that Lot only and are located within the Lot.

Each Owner is responsible for the maintenance, repair or replacement of any Improvements installed by Owners, including, but not limited to security systems, cameras, and lights installed in accordance with the provisions of Section 3.10, above.

#### **(c) Personal Property**

The owner of personal property has the duty to repair, replace or restore the property that is damaged or destroyed by water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment from any place or cause, unless caused by the gross negligence of the Association. Owners agree to bear the risk of any such loss and the Association will not be liable to reimburse them for property damage that is not covered by the Association's insurance.

### **Section 5.3. Recovery of Costs of Certain Repairs and Maintenance**

#### **(a) Willful or Negligent Acts of Owner**

In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's Family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 8.4 and the procedural requirements of Section 16.6. The decision whether to file an insurance claim shall be in the reasonable discretion of the Board.

#### **(b) Owner's Failure to Perform Required Maintenance**

In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within thirty (30) days. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Section 6.5(b) to enter

the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 16.6, hereof.

#### **Section 5.4. Cooperative Maintenance Obligations**

To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association shall cooperate in the performance of maintenance work.

### **ARTICLE VI: HOMEOWNERS ASSOCIATION**

#### **Section 6.1. Management and Operation**

The Association shall manage and operate the Development in accordance with applicable provisions of the Governing Documents and California law, including law applicable to non-profit mutual benefit corporations and common interest developments.

#### **Section 6.2. Association Votes**

Every record Owner of a Lot will be a voting member of the Association. The Owner(s) of a Lot will hold jointly one (1) voting membership in the Association for each Lot owned. If joint Owners are unable to agree by majority vote among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question.

The voting membership will be appurtenant to each Lot and may not be separated from ownership of the Lot. Persons who hold an interest in a Lot merely as security for performance of an obligation are not voting members until such time as the security holder comes into title to the Lot through foreclosure or deed. Lessees who are delegated rights of use pursuant to Section 2.4 hereof do not thereby become voting members, although the lessee and members of the lessee's Family will, at all times, be subject to the Governing Documents.

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

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

#### **Section 6.3. Owner Voting**

Only Owners shall be entitled to vote, and votes shall be cast for each Lot owned by said Owner, as more particularly set forth in the Bylaws. Voting rights may be temporarily suspended under those circumstances described in Section 16.6, below.

#### **Section 6.4. One Class of Voting Membership**

The Association shall have one (1) class of voting membership and the rights, duties, obligations and privileges of the voting members shall be as set forth in the Governing Documents.

## **Section 6.5. Powers and Authority of the Association**

### **(a) Powers Generally**

The Association shall have responsibility for managing and maintaining the Common Areas and Common Facilities and shall discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In discharging its responsibilities and duties, the Association and its Board shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

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

### **(b) Association's Limited Right of Entry**

At the Board's discretion, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Lot to perform the Association's obligations under these CC&Rs, including (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article IV hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

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

The Association's rights of entry under this Subsection (b) shall expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Development and the Owners of Lots therein.

### **(c) Association as Attorney-in-Fact for Owners**

Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to: (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles X and XI hereof, and condemnation and condemnation



awards, as provided in Article XII hereof. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner'' attorney-in-fact as provided above.

#### **Section 6.6. Board of Directors**

The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of the Directors shall be as established in the Bylaws.

##### **(a) Powers of the Board**

The Board shall have all of the powers and duties set forth in the Governing Documents.

##### **(i) Exclusive Power**

Except as expressly otherwise provided herein, the powers and duties of the Association which the Governing Documents do not reserve to the Owners shall be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association shall not be exercised or performed by any Owner of Record individually without the written consent of the Board.

##### **(ii) General Powers of the Board**

Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board shall have the following powers:

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

**(B)** To appoint and remove at pleasure all officers, committees (including the Nominating and Architectural Review Committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 6.7(c)), and require of them such security or fidelity bonds as it may deem necessary. Nothing contained in these CC&Rs shall be construed to prohibit the employment by the Association of any Owner, Director or officer of the Association in any capacity whatsoever.

**(C)** To establish, fix, levy, assess and collect Assessments against the Owners of Lots within the Development and to enforce payment of such Assessments in accordance with Article VIII of these CC&Rs. Any Assessments levied by the Association on its Owners shall be levied in accordance with and pursuant to the provisions of the Governing Documents.

**(D)** To authorize and cause the Association, subject to Section 6.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice. Any reference to the "term" of a contract as used in this Subsection 6.6(a)(ii)(D) shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.



(E) To adopt, amend, and repeal Association Rules consistent with these CC&Rs relating to use of the Common Area and the residential Lots, the conduct of Owners, and their families, tenants, guests and invitees within the Development and such other matters as authorized by the Governing Documents. The Association Rules shall be considered as part of the Governing Documents of the Association and may be enforced in the same manner as any other Governing Document. However, no Association Rule shall restrict any rights of Owners or residents established by the other Governing Documents (Articles, Bylaws and these CC&Rs), and in the event of any conflict between an Association Rule and any other Governing Document, the provisions of the other Governing Document shall control.

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

(G) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of these CC&Rs and the intended use of the Development as a Planned Development.

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

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

(J) Bring and defend actions on behalf of two (2) or more Owners or the Association to protect the interests of the Owners or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Owners for the cost of such litigation. However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its Owners) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Owner(s) who have requested enforcement by the Association. Prior to filing litigation regarding any disciplinary action against an Owner, the Board shall comply with the requirements set forth in Section 16.6.

(K) Establish and impose monetary penalties (fines) for the infraction of any provision of the Governing Documents, in accordance with a schedule of monetary penalties adopted by the Board and distributed to all Owners, and suspend the voting or other Ownership rights and privileges of an Owner, during any period in which such Owner shall be in default in the payment of any assessment, fine, or other charge levied by the Association, and/or for any infraction of the Governing Documents.

**(iii) No Active Business**

The Association may not conduct an active business for profit. However, the Association may acquire, own, lease and/or sell any Lot. However, this Subsection (iii) shall not prohibit the Association and/or its Board from acquiring, owning, leasing and/or selling any Lot within the Development.

**(b) Duties of the Board**

The Board shall:

**(i) Association Duties**

Cause all duties imposed on the Association by Governing Documents to be properly performed.

**(ii) Records**

Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.

**(iii) Supervise**

Supervise all officers, agents and employees of the Association and to see that their duties are properly performed. The Board shall at its discretion, subject to all provisions of these CC&Rs, retain professional management for the Development.

**(iv) Assessments**

With reference to Assessments of the Association:

(A) Fix, levy and collect Assessments pursuant to the provisions of Article VIII of these CC&Rs.

(B) Approve the annual budget and fix the amount of the Assessment against each Owner for each Assessment period in compliance with the provisions of Civil Code Section 5300, et seq., or comparable superseding statute;

(C) Maintain a roster of the Owners and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner;

(D) Send written notice of each Assessment to every Owner subject thereto; and

(E) Issue or cause an appropriate officer to issue certificates as required by Sections 4.15 and 8.13.

**(v) Insurance**

Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by these CC&Rs and as deemed necessary by the Board.

**(vi) Vacancies**

Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by an Owner recall.

**(vii) Discharge of Liens**

Pay any amount necessary to Bond or discharge any claim which may be or become a lien or encumbrance levied against the Development as a whole or any part thereof which constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided,

however, that where one (1) or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be assessed against each such Owner and its Lot as provided in Article VIII. No decision resulting in such liability or Assessment shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 16.6 of these CC&Rs.

#### **(viii) Enforcement**

Commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of these CC&Rs, the Articles, the Bylaws, the Association Rules, the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing.

However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its Owners) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Owner(s) who have requested enforcement by the Association.

In addition, the Board may suspend the voting rights of an Owner or suspend the privileges of an Owner or their Family, tenants, or lessees, or their guests, invitees, or licensees to use the recreational facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the Owner is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 16.6 of these CC&Rs) with respect to the alleged violation before a decision to impose discipline is made. The Board may delegate some or all of its enforcement rights to a Disciplinary Committee.

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

In the event legal action (including arbitration or mediation required under California law as a prerequisite to any lawsuit) is instituted by the Board pursuant to this section, any judgment or award rendered in any such action shall include all costs of collection (including but not limited to related management fees and costs), court/arbitration/mediation costs and reasonable attorneys' fees.

#### **(ix) Operating Requirements**

Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or Assessments which the Association is required to secure or pay by law, local requirement, or pursuant to the terms of these CC&Rs, or as is necessary for the operation of the Development, or for the enforcement of these CC&Rs; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations,

insurance, taxes, or Assessments are provided for particular Lots, the costs thereof shall, as is reasonable, be assessed to such Lots and the Owners thereof as provided in Article VIII or as provided in the Bylaws.

#### **Section 6.7. Limitations on Powers of the Association**

Neither the Board nor the Association will have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Owners:

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

(i) A management contract as long as the contract allows the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract will not exceed the shortest term for which the supplier will contract at the regulated rate.

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

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

(v) Lease agreements for equipment not to exceed five (5) years' duration.

(vi) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services for the Common Area and Lots owned by the Association not to exceed five (5) years' duration.

For purposes of this subsection, the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of said term.

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

(c) Paying compensation to Directors or officers, except that the Board may authorize reimbursement to a Director or officer for expenses incurred regarding the Association's business.

(d) Filling a vacancy on the Board caused by the removal of a Director by the Owners.

#### **Section 6.8. Non-liability of Officials**

To the fullest extent permitted by law, neither a director, officer, committee of the Association or member of a committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), shall be liable to any Owner, the Association or any other party for any damage, loss,

claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and within which such person or entity reasonably believed to be the scope of its duties.

**(a) Claims Regarding Breach of Duty**

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

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

**(b) Other Claims Involving Tortious Acts and Property Damage**

No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association shall recover damages from such Board Member or officer if all of the following conditions are satisfied:

(i) The Board member or officer does not own more than two (2) Lots;

(ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;

(iii) The act or omission was performed in good faith;

(iv) The act or omission was not willful, wanton, or grossly negligent;

(v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 5800 or comparable superseding statute.

The payment of actual expenses incurred by a Board member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Lot within the Development as the result of a judicial or non-judicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 5800. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes,

this Subsection (b) shall be deemed amended, without the necessity of further Owner approval, to correspond to the amended or successor code provision.

**(c) Indemnification of Directors, Officers, Employees and/or Agents**

The indemnification rights (including the right to advancement of expenses) of directors, officers, employees and/or agents shall be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute. As set forth in Article X, the Association has the right to purchase and maintain insurance on behalf of its directors, officers, employees and/or agents against liability asserted against or incurred by any Director, officer, employee and/or agent in its capacity or status as such.

**ARTICLE VII: PARTY WALLS – TOWNHOUSE RESIDENCES ONLY**

**Section 7.1. General Rules of Law to Apply**

Each wall which is built as a part of the original construction of townhouse Residences within the Development and placed on the dividing line between adjoining townhouse Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 7.2. Sharing of Repair and Maintenance**

The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

**Section 7.3. Destruction by Fire or Other Casualty**

If a Party Wall is destroyed or, damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportion 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.

**Section 7.4. Weatherproofing**

Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid for by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 7.5. Right to Contribution Runs With Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## **Section 7.6. Arbitration**

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

## **Section 7.7. Party Wall Easements**

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

## **ARTICLE VIII: ASSESSMENTS**

### **Section 8.1. Assessments Generally**

#### **(a) Covenant to Pay Assessments**

Each Owner of one (1) or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance 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 charges and for the enforcement of the liens hereinafter provided for. Each such Assessment shall be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any Assessment provided for herein by nonuse of the Common Area or by abandonment.

#### **(b) Extent of Owner's Personal Obligation for Assessments**

##### **(i) Obligation Runs with the Land**

The obligation to pay Assessments and 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(s) of record of any Lot within the Development shall, in turn, become liable to pay all Assessments and charges assessed during the time they are record Owner of such Lot.



**(ii) Personal Debt of Owner**

All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a separate, distinct and personal debt and a personal obligation of the person or entity that was the Owner of the Lot at the time the Assessment was levied.

**(iii) Liability of Subsequent Owner**

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

**(iv) Liability of Prior Owner**

After a record Owner transfers, of record, any Lot they own, they shall not be liable for any Assessments levied after the transfer with respect to that Lot. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and the previous Owner shall remain personally liable. A contract seller of any Lot shall continue to be liable for all Assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the Sacramento County Recorder.

**(c) Authority of Board to Levy Assessments**

The Board shall have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board shall not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board shall also have the power and authority to levy Special Individual Assessments against particular Owners and their Lot(s).

**(d) Authority of Board to Record Assessment Lien**

The Board shall have authority to prepare and record a lien against any Lot for which assessments are delinquent, and to foreclose upon such lien pursuant to Section 8.9 of these CC&Rs.

**(e) No Avoidance of Assessment Obligations**

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

**(f) Offsets**

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

## **Section 8.2. Regular Assessments**

### **(a) Purpose of Regular Assessments**

All Regular Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Lots, Common Area, and any real or personal property in which the Association holds an interest.

### **(b) Annual Budget; Regular Assessments & Board Authority**

In accord with the timing provisions of Civil Code Section 5300 (or comparable superseding statute) which requires distribution of a budget thirty (30) to ninety (90) days before the end of its fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities/Common Area), prepare and then distribute to all Association Owners a budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners.

### **(c) Board or Ownership Approval Requirements**

The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (d) and (f) below, the Board of Directors may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Owners casting a majority of the votes at a duly called meeting or election of the Association (See Section 8.7, below). For purposes of this Subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Lots for that particular year.

### **(d) Assessments to Address Emergency Situations**

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

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

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

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (a), above, provided that, prior to the imposition or collection of an assessment under this Subsection (d)(iii), the Board shall pass a resolution containing written findings as to the necessity of the

extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Owners together with the notice of assessment.

**(e) Allocation of Regular Assessment**

The total estimated Common Expenses, determined in accordance with subparagraph (b), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Development owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

**(f) Failure to Make Estimate**

If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 8.3 for that year, shall be automatically assessed against each Owner and their Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

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

**(g) Assessment Due Date, Installment Payments & Delinquency**

The Regular Assessment levied against each Owner and their Lot for the current fiscal year shall be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (i.e., current on all assessments). Each monthly installment is due and payable on the first (1st) day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board of Directors.

Installments of Regular Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 8.9, below, as to said delinquency.

**(h) Mailing Notice of Assessment**

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

### **Section 8.3. Special Assessments**

#### **(a) Purposes for Which Special Assessments May Be Levied**

Subject to the Ownership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

##### **(i) Regular Assessment Insufficient in Amount**

If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 8.3(b), the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

##### **(ii) Capital Improvements**

The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of these CC&Rs that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X hereof.

##### **(iii) Reimbursement of Reserve Account(s)**

A Special Assessment may be levied to reimburse any reserve account for funds borrowed from it to meet current operating expenses or to deal with emergencies.

##### **(iv) Repair of Defects or Damage**

A Special Assessment may be levied to repair damage or defects discovered in the Common Area or Common Facilities or within those portions of a Lot or Residence which are the responsibility of the Association to maintain and repair, where the reserve funds are inadequate to pay for such repairs, or where the affected component is not a component included in the reserve funding program.

#### **(b) Special Assessments Requiring Ownership Approval**

No Special Assessments described in Section 8.3(a) hereof, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written approval of a majority of a quorum of Owners. For purposes of this Section a quorum shall be a majority of the Owners. This Owner approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 8.2(d). Any Special Assessments imposed pursuant to subparagraph (a)(i) of this Section when the Board has failed to distribute a budget to the Owners within the time specific in Section 8.2(b) requires Owner approval.

**(c) Allocation and Payment of Special Assessments**

When levied by the Board or approved by the Owners as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and their Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 8.2(e), above. Notice of the Special Assessment so levied shall be mailed to each Owner.

**(d) Due Date for Special Assessments**

Unless the time for payment is extended by the Board, payment of all Special Assessments shall be due ten (10) days after the Board gives the Owners written notice thereof or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

Special assessments for purposes described in subparagraph (a)(i) of this Section shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year.

Special assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a Lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to such Special Assessment.

**(e) Installment Payments of Special Assessment**

The Board may, in its discretion, prorate the amount of any permitted Special Assessment over a period of months. If prorated, the monthly prorated amount of any Special Assessment shall be due and payable at the same time as the Regular Assessment monthly installments. Installments of Special Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment installment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any Special Assessment installment, the Association may pursue the remedies set forth in Section 8.9, below, as to said delinquency and the Board may in its discretion declare the entire unpaid amount of the Special Assessment immediately due and payable.

**Section 8.4. Special Individual Assessments**

**(a) Circumstances Giving Rise to Special Individual Assessments**

In addition to the Special Assessments levied against all Owners in accordance with Section 8.3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (i) through (vii), below or as otherwise provided in these CC&Rs or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 8.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 16.6(f) and (g) hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Associations Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Common Area or Common Facilities**

In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Lot which the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, any member of Owner's Family, or any of Owner's tenants, lessees, guests, contract purchasers, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(ii) Expenses Incurred in Gaining Owner Compliance**

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

As long as Civil Code Section 5725 (or comparable superseding statutes) places restrictions upon the Association's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (i.e., fines or penalties imposed under Article XVI) can only be enforceable by the sale of said Lot pursuant to judicial foreclosure. All other liens under this Subsection (ii) may be enforceable by the sale of said Lot under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s).

**(iii) Required Maintenance on Lots**

As more particularly provided in Section 6.5(b) (and without limiting the generality of that subsection), if the Board, in its discretion, determines that any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(iv) Maintenance to Utilities**

As more particularly provided in Section 5.1(a), if the Board, in its discretion, determines that the maintenance and repair of utility lines maintained in the Common Area service only one Lot, then the Board may impose an assessment against the Owner of that Lot for the cost of such maintenance and/or repair.

**(v) Diminution in Insurance Proceeds**

Pursuant to Section 10.4, the Association shall levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

**(vi) Increase in Insurance Burden**

The Association shall have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.

**(vii) Additional Costs Associated With Extended Payment Program**

If the Board permits payment of a Special Assessment by periodic payments over a specified period of time and funds such an extended payment program through a commercial loan or line of credit, the Owners who participate in such a program (rather than paying the entire Special Assessment when due) shall be assessed the interest, loan fees and other costs associated with the program in addition to the principal amount of the Special Assessment.

**(b) Levy of Special Individual Assessment and Payment**

Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Section 8.4(a), notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments shall be delinquent if not actually received by the Association or its designated agent within five (5) days from the due date provided in the mailing of notice of Assessment. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 8.9, below, as to said delinquency.

**Section 8.5. Reasonableness of Assessments**

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

**Section 8.6. Exemption of Certain Parts of the Development From Assessments**

The following real property subject to these CC&Rs shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a)** Any portion of the Development dedicated and accepted by a local public authority;



(b) The Common Area and Common Facilities; and

(c) Any Lot owned by the Association.

#### **Section 8.7. Notice and Procedure for Owner Approval**

In the event that Owner approval is required in connection with any increase or imposition of Assessments pursuant to Sections 8.2 and/or 8.3, approval of the requisite percentage of the Owners shall be solicited by written ballot pursuant to the Bylaws. The quorum required for such Ownership action shall be a majority of Owners.

#### **Section 8.8. Maintenance of Assessment Funds**

##### **(a) Bank Accounts**

All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, shall be promptly deposited in the Association's bank account, which shall be either an insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board of Directors which has offices located within Sacramento County. In addition, the Association shall maintain at least two (2) bank accounts which accounts shall be clearly designated as either an "operating" or "reserve" account.

Disbursements from the operating account shall be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article VIII.

The Board shall be responsible to make prudent investment of reserve funds consistent with the investment standards normally observed by trustees, per the Prudent Investor Rule in Probate Code 16047. The Reserve Fund is to be invested with care, skill and caution with the objective of preserving the long term, real purchasing power of assets, giving priority to preservation of principal, production of income, and capital appreciation, in that order.

The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one (1) or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained.

##### **(b) Separate Accounts and Commingling of Funds**

Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Owners to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned

proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 8.3 shall be accounted for together with the receipts and disbursements of Regular Assessments.

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

#### **(c) Reserve Funds**

The Association shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Association may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Association has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Association may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Association shall exercise prudent fiscal management in maintaining the integrity of reserve accounts, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (c). This Special Assessment is subject to the limitation imposed by California Civil Code Section 5600 and Section 8.3(b), above. The Association may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Association from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Owners of that decision in the next available mailing to all Owners pursuant to California Corporations Code Section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Owners at the Association's principal office.

#### **(d) Checks**

All checks (or other demands for payments of Association money) and/or notes of the Association shall be signed by the President or by such other directors and/or officers or such other person(s) as the Board of Directors may from time to time designate. Notwithstanding the foregoing, any

withdrawal of funds from Association reserve accounts shall require the minimum signature requirements of Civil Code Section 5510(a) (i.e., two (2) directors or an officer (who is not a director) and a director).

## **Section 8.9. Collection of Assessments; Enforcement of Liens**

### **(a) Delinquent Assessments**

If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not actually received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose late charges for any delinquent Assessments.

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

#### **(i) Creation and Imposition of Liens for Delinquent Assessments**

The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed from and after the time the Association causes to be recorded with the Sacramento County Recorder a Notice of Delinquent Assessment in conformance with Civil Code Section 5675 or comparable superseding statute. Each default shall constitute a separate basis for a lien. Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded in the Office of the County Recorder of the County of Sacramento, State of California, a Notice of Satisfaction and Release of Lien.

#### **(ii) Partial Payment of Assessments**

Subject to the limitations imposed by Civil Code Section 5655 or comparable superseding statute, if any, any partial payments the Association receives will be applied as specified in the Association's Delinquent Assessment Collection Policy and/or Association Rules.

#### **(iii) Remedies Available to the Association to Collect Assessments**

In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: (A) the Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, (B) foreclose its lien against the Owner's Lot, or (C) accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by non-judicial foreclosure. However, except as otherwise provided by law, judicial or non-judicial foreclosure shall only be available to collect delinquent Assessments in excess of one thousand eight hundred dollars (\$1,800) exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees or interest or if the Assessments are more than twelve (12) months delinquent. The Association shall, in collecting any delinquent Assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents or California law.

**(iv) Non-judicial Foreclosure**

Non-judicial foreclosure shall be commenced by the Association in compliance with California law. (See Civil Code Section 2924c, or comparable superseding statute). Each of the Owners does, by mere acceptance of a deed to a Lot, give the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any non-judicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in non-judicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any non-judicial foreclosure hereunder.

**(v) Judicial Foreclosure**

In the event foreclosure is by action in court, reasonable costs, including attorneys' fees, shall be allowed.

**(vi) Actions for Money Judgment**

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

**(c) Payment Plans**

The Board may, but is not required to adopt rules or policies (which shall become part of the Association Rules) permitting an owner to make installment payments on any delinquent Assessments, accelerated Assessments, late charges, fees and costs of collection, attorney's fees and/or interest, subject to reasonable terms and conditions, including payment of additional administrative costs for administering such a payment plan.

**Section 8.10. Transfer of Lot by Sale or Foreclosure**

The following shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

**(a) Assessment Liens Recorded Prior to Transfer**

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

**(b) Foreclosure by Holder of Prior Encumbrance**

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

**(c) Liability of New Owner for Future Assessments**

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

**(d) Personal Liability of Prior Owner for Assessments**

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

**Section 8.11. Creation of Lien**

There will be a continuing lien, arising as of the recordation of these CC&Rs, on each Lot within the Development to secure the payment obligations of the Lot Owner as to any and all Association Assessments. The priority of any lien created pursuant to this article will arise at the earliest of the following two (2) dates: (1) date that these CC&Rs were recorded or (2) the date that the notice of assessment was recorded.

**Section 8.12. Priorities**

Except as otherwise provided by law, the lien securing each of the Assessments provided for under this Article VIII shall have priority, as of the date of recording of the Notice of Delinquent Assessment, over all other liens and encumbrances applicable to the Lot, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto; (b) any lien or encumbrance recorded prior to the recording of the Notice of Delinquent Assessment; or (c) the lien or charge of any First Mortgage of record made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage.

**Section 8.13. Estoppel Certificate**

A certificate executed by any two (2) Owners of the Board setting forth the amount of any due and unpaid Assessments with respect to a Lot (or the fact that all Assessments due are paid, if such is the case) shall be conclusive against the Board, the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner shall be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee.

#### **Section 8.14. Unallocated Taxes**

In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 8.2 and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

#### **Section 8.15. Assignment of Rents**

Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments which are in default and due the Association pursuant to these CC&Rs. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon an Owner's default of Assessments due to the Association, the Association after providing written notice to the defaulting Owner may, in its discretion, revoke the authority allowing the defaulting Owner to collect and retain rents and other monies. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagee. In addition, the Association shall have the right to levy a Special Individual Assessment, pursuant to Section 8.4 above, against the defaulting Owner for attorney's fees and costs incurred by the Association in collecting or retaining rents and other monies derived from an Owner's lease or agreement for failure to pay the Owner's Assessments.

#### **Section 8.16. Waiver of Exemptions**

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

#### **Section 8.17. Secondary Address**

Any Owner may provide the Association with a secondary address. Any notice of a secondary address shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. If a secondary address is provided in accordance with this section, the Association shall send any and all correspondence and legal notices regarding assessments and foreclosures required by this Article VIII or by California law to both the primary and the secondary address.

### **ARTICLE IX: EASEMENTS & RESERVATIONS**

#### **Section 9.1. Encroachment Easements**

Each Lot is hereby declared to have an easement over adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications, and due to engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid

easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurs due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

#### **Section 9.2. Street Easements**

Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the private streets within the Development.

#### **Section 9.3. Blanket Utility Easement**

There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Development except as approved by the Association's Board of Directors. The easements provided for in this Section shall in no way effect any other recorded easement on the Development.

#### **Section 9.4. Maintenance Easements**

An easement is hereby granted to the Association, its officers, agents, employees, and to any contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Lots, Common Area, or Common Facilities provided for herein.

#### **Section 9.5. Boundary Changes**

An easement shall exist for use and maintenance as Common Area over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction lies between that boundary and a Lot line abutting the Common Area.

#### **Section 9.6. Other Easements**

Each Lot and its Owner and the Association, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Lot as shown on the Subdivision Map.

#### **Section 9.7. Priority of Easements**

Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.



## **ARTICLE X: INSURANCE**

### **Section 10.1. Types of Insurance Coverage**

The Association is obligated to purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

#### **(a) Fire and Hazard Insurance**

The Association shall obtain and maintain a master or blanket policy of fire and hazard insurance, written on all risk, replacement cost basis, on any Common Facilities and all Residence improvements within the Development, except that such property of any kind or description contained within the unfinished interior surfaces of the walls, floors and ceilings of each Residence shall not be insured by the Association. Additionally, the Association shall have no obligation to: (i) obtain earthquake insurance, (ii) insure individual Residences against interior damage caused by water intrusion, or (iii) obtain insurance to eradicate or correct any damage or infestation caused on any portion of the Development by mold or termites.

The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be re-determined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain an endorsement in favor of the trustee described in Section 10.5, below.

#### **(b) Public Liability and Property Damage Insurance**

To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and 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 Five Million Dollars (\$5,000,000) covering all claims for death, bodily injury and property damage arising out of a single occurrence. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use, including personal injury liability. The Association shall also obtain directors and officers liability insurance when reasonably obtainable.

#### **(c) Additional Insurance and Bonds**

The Association shall purchase and maintain insurance on personal property owned by the Association. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be

necessary or desirable, including, without limiting the generality of this Section, demolition insurance, and flood insurance, provided, however, that the Association shall have no obligation to: (i) obtain earthquake insurance, (ii) insure individual Residences against interior damage caused by water intrusion, or (iii) obtain insurance to eradicate or correct any damage or infestation caused on any portion of the Development by mold or termites.

The Association shall purchase and maintain workers' compensation insurance, as required, and fidelity bonds or insurance in an amount not less than one hundred (100%) percent of each year's estimated annual operating expenses and which shall contain an endorsement of any person who may serve without compensation.

#### **Section 10.2. Coverage Not Available**

In the event any insurance policy, or any endorsement thereof, required by Section 10. 1, above, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Association shall notify the Owners of any material adverse changes in the Association's insurance coverage.

#### **Section 10.3. Copies of Policies**

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

#### **Section 10.4. Individual Fire and Casualty Insurance Limited**

(a) For the purpose of wholly repairing damage or rebuilding a damaged Residence, Owners are obligated hereunder to insure their Residences' improvements which are not otherwise covered under Section 10.1(a), above. All such individual insurance must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first mortgage.

(b) An Owner can insure his or her Residence or any part of it against loss by fire or other hazard which is covered by the Association's blanket insurance carried in accordance with Section 10.1(a), above; however, any diminution in insurance proceeds otherwise payable to the provisions of Section 10. 1(a), above, that results from the existence of such other coverage will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution.

(c) Owners shall be solely responsible for insuring their Residence interiors and contents, and if the Owner so chooses, for the eradication and damage of termites and damage caused by earthquake, interior water intrusion or mold.

(d) Copies or certificates of any or all individual Owner's property insurance policy shall be provided by the Owner to the Association upon request by the Board of Directors.

#### **Section 10.5. Trustee**

All insurance proceeds payable under Section 10.1, above, and subject to the rights of the Mortgagees under Section 10.7, below, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in Sacramento County that agrees in writing to accept such trust.

#### **Section 10.6. Adjustment of Losses**

The Association 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 10.1, above. The Association is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

#### **Section 10.7. Distribution to Mortgagees**

Subject to the provisions of Article XIV, below, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

#### **Section 10.8. Deductibles**

If a policy of insurance maintained by the Association covers a loss on an Owner's Residence, the Owner shall be responsible for paying the deductible on said policy of insurance. If the Owner fails to reimburse the Association for the deductible upon written demand, the Association shall have the right to recover the deductible through imposition of a Special Individual Assessment against the Owner, in accordance with Section 8.4, above. An Owner shall also be responsible to pay any and all insurance deductibles for claims related to coverage on his or her Residence on any individual policies of insurance carried by the Owner.

### **ARTICLE XI: DAMAGE OR DESTRUCTION**

#### **Section 11.1. General Provisions**

In the event of damage by fire or other casualty, the Association will have exclusive authority to negotiate losses/insurance proceeds.

##### **(a) Allocation**

If more than a single Lot is damaged/destroyed, the insurance proceeds received will be fairly allocated between and among the damage or destruction to the Lot(s) and/or the Common Area.

##### **(b) Repair, Reconstruction and Notice**

If repair and reconstruction is to take place, 1) the Board will have the authority to enter into a written contract with contractor(s) for the repair and reconstruction and, on behalf of the Association and its Owners, will enter into a construction contract for any work required; 2) all, or any such portion of the insurance proceeds, as are necessary will be expended to rebuild or repair in accordance with conditions prior to the event of damage or destruction, or as the Association, the Owner(s) and Mortgagee(s) may

elect to alter the same in accordance with their respective rights; 3) the Board will be required to execute, acknowledge and record in the office of the County Recorder, not later than one hundred and twenty (120) days from the date of such destruction, a certificate declaring the intention of the Owners to rebuild (or not to rebuild).

It will be the obligation of the Board to take all steps necessary to assure the commencement and the completion of authorized repairs and reconstruction occur at the earliest possible date.

**(c) Special Assessment**

If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board will obtain the additional proceeds required to complete the work in the following manner: A proportionate share of any additional sums required to repair or rebuild Lot(s) and/or the Common Area will be obtained by Special Assessment levied against all Lots, unless the proceeds are insufficient due to an Owner's willful or negligent act or omission, in which case the additional sums required may be assessed against that Owner, in accordance with Section 16.6.

Within fifteen (15) days from the date of the mailing of the notice to the Owner of their share of the liability, any Owner can dispute the amount of their proportionate liability under this Section 11.1 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of an Owner's written objections, the Board will schedule a hearing. The Owner may be represented by counsel at this hearing. Following such hearing, the Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. The decision of the Board will be final and binding on all Owners, including any Owner filing objections.

**(d) Advancement of Special Assessment**

If any Owner fails to pay, within thirty (30) days of the levy, the Special Assessment levied against that Owner's Lot, the Board may advance (without relieving the Owner(s) or the Owners' Lot(s) from liability therefor) an amount equal to the unpaid assessments.

**(e) Procedures if Rebuilding Not Approved by Owners**

If, in accordance with the procedures set forth in Section 11.3, below, the Owners determine not to rebuild the damaged or destroyed portions of the Development, the Board will, within twenty (20) days after the Owners determined not to rebuild, propose such alternative reconstruction of the damaged or destroyed portions of the Development at a lesser cost as the Board deems reasonable or adequate. The Board's proposal will be placed before the Owners and voted upon in accordance with the appropriate method set forth in Sections 11.2 and 11.3, below.

If, prior to the expiration of one hundred twenty (120) days from the date of destruction, seventy-five (75%) percent of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Lots within the Development consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Lots which were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser) less the estimated value of property not covered by the insurance specified in Section 10.1(a), above, using the available proceeds of insurance for such purpose. The Association's decision as to whether or not a Lot is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Lot and

each Owner by accepting a deed to a Lot agrees to be bound by these provisions and to sell his or her Lot by grant deed to the Association as provided herein. Concurrently with such purchase, the Association or individuals authorized by the Association, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and these CC&Rs to eliminate from the Development the Lots so purchased.

All Lots that were not rendered uninhabitable must be repaired to a condition as near as possible to their condition immediately prior to the casualty that caused the damage. Such repair and restoration shall be paid first from the insurance proceeds remaining after the purchase of Lots pursuant to Section 11.1(a), above, if any, and second, from a Special Individual Assessment levied against all remaining Owners in the manner described in Section 11.1(c), above.

If the required seventy-five (75%) percent of all Owners and institutional first Mortgagees do not consent to purchase the lots which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Lots in the Development, as of a date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners of the damaged or destroyed Residences and their respective Mortgagees, in proportion to such relative values. The Association shall have the duty, within one hundred twenty (120) days from the date of destruction, to execute, acknowledge and record in the office of the County Recorder, a certificate declaring the intention of the Owners not to rebuild.

If the Owners do not approve rebuilding or repurchase, the Board is hereby empowered, as the agent for all Owners, to sell the entire Development, including all Lots and the Common Area in its then present condition, on terms satisfactory to the Board. Proceeds from the sale along with the insurance proceeds must be distributed by the Board among the Owners and their respective First Mortgagees, as their respective interests may appear, according to the fair market values of the Lots immediately prior to the casualty event. The Board will also cause to be recorded a certificate declaring the intention of the Owners not to rebuild.

Fair market value will be determined by an independent appraiser selected by the Board who will be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who will apply its or such other organization's standards in determining the fair market value of each Lot. The appraisal costs may be paid from the sale or insurance proceeds, as the case may be.

## **Section 11.2. Rebuilding Procedures**

If the eligible Owners determine to rebuild, the Owner of each Lot located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Lot, over and above the available insurance proceeds. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Lot bears to the total square footage of the floor area of all Lots. If any Owner fails or refuses to pay his or her proportionate share, the Association may levy a Special Individual Assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article VIII, above, or in any other manner provided in these CC&Rs.

If any Owner disputes the amount of his or her proportionate liability under this Section, such Owner may contest the amount of his or her liability by submitting to the Association within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Association at

which the Owner may be represented by counsel. Following such hearing, the Association shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall contain the date, time and place of a special meeting of Owners to be held for the purpose of acting on the Association's recommendation, including making further adjustments, if deemed by the Owners to be necessary or appropriate. All adjustments shall be affirmed or modified by fifty-one (51%) percent of the total voting power of the eligible Owners. If no adjustments are recommended by the Association, the decision of the Association shall be final and binding on all Owners, including any Owner filing objections.

### **Section 11.3. Minor Deficiency in Insurance Proceeds**

If the available proceeds of the insurance maintained pursuant to Article X are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, the Improvements will be promptly rebuilt unless, within ninety (90) days from the date of destruction, seventy-five (75) percent of the total voting power "Eligible Owners" (as defined in Section 11.5, below), determine, in accordance with the procedures set forth in Section 11.4, below, that such repair and reconstruction will not take place. If repair and reconstruction is to take place, the Board will be required to execute, acknowledge and record in the office of the County Recorder, not later than two hundred and twenty (220) days from the date of such destruction, a certificate declaring the intention of the Owners to rebuild.

### **Section 11.4. Major Deficiency in Insurance Proceeds**

If Section 11.3 is not applicable, then:

If the proceeds of insurance are less than eighty-five (85%) percent of the associated cost of repair and reconstruction, at least those portions covered by the insurance specified in Section 10.1(a), above, repair and reconstruction may nevertheless take place, if, within ninety (90) days from the date of destruction, eligible Owners then holding at least fifty-one (51%) percent of the total voting power, determine that such repair and reconstruction shall take place, the Association shall be required to execute, acknowledge and record in the office of the County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Owners to rebuild.

### **Section 11.5. Definition of "Eligible Owners" Entitled to Vote**

For purposes of any vote pursuant to this Article XI, the Owners eligible to vote shall be: (a) the requisite percentage of the total voting power of the Ownership in the case of any damage or destruction of Common Facilities, and (b) the requisite percentage of those Owners whose Residences are located in the damaged or destroyed structure(s). Any Ownership vote required hereunder will be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with the Bylaws.

### **Section 11.6. Emergency Repairs**

Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as the Board may deem necessary or desirable under the circumstances, and the Board may charge the maintenance fund for the costs thereof where such repairs are done prior to settlement of insurance claims.

### **Section 11.7. Minor Repair and Reconstruction**

In any case, the Association shall have the duty to repair and reconstruct improvements, at least those portions covered by the insurance specified in Section 10.1(a), above, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Fifty Thousand Dollars (\$50,000). Any amounts paid by the Association in excess of available insurance proceeds, up to and including Fifty Thousand Dollars (\$50,000) shall be assessed to the Lots which are damaged upon the basis of the ratio of the square footage of the floor area of the Lot to be assessed to the total square footage of the floor area of all Lots to be assessed. In the case of damage to Common Facilities which does not exceed Fifty Thousand Dollars (\$50,000), all Lots shall be assessed for an equal portion of any uninsured expense.

### **Section 11.8. Termination of Partition Waiver**

The prohibition against judicial partition of the Planned Development pursuant to California Civil Code Section 4610, or comparable superseding statute, will terminate upon the recordation of a certificate not to rebuild as described and required in Sections 11.1(e). Upon final judgment of a court of competent jurisdiction decreeing a partition, the proceeds or property resulting from the partition will be distributed to and among the respective Owners and their Mortgagees, as their interests appear, as follows: The Board will select an independent appraiser, as specified in Section 11.9, who will determine the relative fair market values of the Lots. The proceeds or property will then be apportioned among the Owners, and their respective Mortgagees, according to such relative values. Such relative values will be determined as of a date immediately prior to any sale, taking or destruction of the Development. The covenants, conditions and restrictions of the CC&Rs will then terminate.

### **Section 11.9. Appraiser**

Wherever in this Article Article XI or Article XII, below, (Condemnation) reference is made to a determination of the value or fair market value of one or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or, such other organization's standards, in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## **ARTICLE XII: CONDEMNATION**

### **Section 12.1. Sale by or Taking**

The Board or a trustee appointed by the Board to act on behalf of the Association will represent all of the Owners in any condemnation proceeding, negotiations, settlements and/or agreements. Each Owner by accepting a deed to a Lot in the Development hereby grants the Board or its appointed trustee an irrevocable power of attorney to act on behalf of the Association and all Owners in any condemnation or proposed/threatened condemnation.



## **Section 12.2. Distribution and Sale Proceeds of Condemnation Award**

### **(a) Total Sale or Taking**

A total sale or taking of the Development means a sale or taking that (i) renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (ii) renders the Development as a whole uneconomical as determined by the vote or written consent of sixty-six and two-thirds percent (66-2/3%) of those Owners and their respective Eligible First Mortgagees whose Lots will remain habitable after the taking.

Any determination that a sale or taking is total must be made before the proceeds from said sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, will be paid to all Owners and to their respective Mortgagees, as their respective interests may appear, in the proportion that the fair market value of each Lot bears to the fair market value of all Lots in the Development. The fair market value of Lots will be determined in the condemnation action, if such be instituted, or by an appraiser as specified in Section 11.1(e).

### **(b) Partial Sale or Taking**

In the event of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking, as determined in Section 12.2(a), above, the proceeds from the sale or taking will be paid or applied in the following order of priority and any judgments of condemnation will include the following provisions as part of its terms:

(i) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Lots in the Development whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser (pursuant to Section 11.9), less such Owners' share of expenses paid pursuant to this Section 12.2(b)(ii) (which share will be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots).

After such payment, the recipient will no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney in fact of all Owners will amend the Subdivision Map, if any, and these CC&Rs to eliminate from the Development the Lots so sold or taken; then

(iii) To any remaining Owner(s) and to their Mortgagees, as their interests may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to Section 11.9), an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

### **Section 12.3. Appraiser**

The costs of such appraisals will be paid from the condemnation/sale proceeds as an expense of the Association.

## **ARTICLE XIII: PARTITION OF COMMON AREA**

### **Section 13.1. Suspension or Right of Partition**

Except as expressly provided in this Article XIII, an Owner shall have no right to partition or divide their ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article XI (relating to damage or destruction) or in Article XII (relating to condemnation) or in California Civil Code Section 4610 have been met.

Nothing in these CC&Rs shall prevent partition of a co-tenancy in a Lot; provided, however, that any such judicial partition of a co-tenancy shall require the prior written consent of any First Mortgagee holding a Mortgage on such Lot.

### **Section 13.2. Distribution of Proceeds upon Partition**

Proceeds resulting from a partition of property shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Owners' Lots determined by appraisal, as provided in Section 11.3. The fair market value shall be determined as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

### **Section 13.3. Power of Attorney**

Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to dispose of the entire Development, and to execute deeds and conveyances to it, in one (1) or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code Section 4610 and under the circumstances authorizing partition under these CC&Rs.

The power of attorney shall: (a) be binding on all Owners, whether they assume the obligations under these CC&Rs or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of a majority of the Owners in Good Standing (as defined in Section 1.23 of the Bylaws); and (c) be exercisable only after recordation with the Sacramento County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under Civil Code Section 4610. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

## **ARTICLE XIV: PROTECTION OF MORTGAGEES**

### **Section 14.1. Assessment Lien Subordinated**

Any lien created or claimed under the provisions of Section 8.11, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage

shall be obligated to cure any breach of these CC&Rs by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Section 8.11, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such recorded Mortgage.

#### **Section 14.2. Amendment of These CC&Rs**

No amendment of these CC&Rs shall affect any of the rights of the holder of any Mortgage described in Section 14.1, above, 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.

#### **Section 14.3. Default by Owners 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 Section 2924 of the California Civil Code, 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.

#### **Section 14.4. Breach: Obligation after Foreclosure**

No breach of any provision of these CC&Rs by 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. The Association or its successor 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 these CC&Rs as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

#### **Section 14.5. Exchange of Information**

The Association shall, at the request of any Mortgagee of any Lot, report to such Mortgagee any unpaid Assessment due from the Owner of such Lot and notify the Mortgagee in writing of any default by such Owner in the performance of his or her obligations under these CC&Rs when such default has been in existence for thirty (30) days and has not been cured. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

#### **Section 14.6. Certain Restrictions Affecting the Association**

Notwithstanding any other provisions of these CC&Rs, without the prior written consent of at least seventy-five (75%) percent of the Owners and holders of first Mortgages on the Lots, such percentage to be based upon the total number of Lots so mortgaged, with each such Mortgagee entitled to one vote, the Association shall not:

(a) By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Area or any improvements thereon (except that the granting of any easement for public utilities, or for other

public purposes consistent with the intended use of the Development, shall not be deemed a “transfer” as that term is used in this clause);

(b) Change the method provided for in these CC&Rs of determining the Assessments or other charges which may be assessed against an Owner;

(c) By act or omission, waive or abandon the scheme of maintenance and repair of the Development, or the enforcement thereof, as provided for in these CC&Rs;

(d) Fail to maintain casualty insurance on the Common Facilities in the amount and against the risks provided for in Section 10.1, above; and

(e) Use any insurance proceeds received as a result of the loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

#### **Section 14.7. Rights of First Mortgagees to Make Certain Payments and to Receive Reimbursement**

The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly, (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities, (b) to pay overdue premiums on casualty insurance policies for the Common Facilities, and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in Section 10.1, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the president or any vice president and the secretary, evidence its agreement to the provisions of this Section as the same affects the Mortgage held by such Mortgagee.

#### **Section 14.8. Right to Examine Books and Records of the Association**

The holder of any first Mortgage on any Lot or on the Common Area shall have the right to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association, and (c) receive a written notice of all meetings of the Association and designate a representative to attend all such meetings. The requesting Mortgagee shall pay the actual expenses of copying and mailing of said information to the Association.

#### **Section 14.9. Notices to First Mortgagees**

The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, prompt notice of: (a) abandonment or termination of the Association, (b) any material amendment to the CC&Rs, (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Common Area and development, (d) any condemnation or eminent domain proceeding, and (e) any extensive damage to or destruction of any improvements located in or on the Common Area.

#### **Section 14.10. Superiority of Mortgage to Condemnation Proceeds**

If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and

superior to the claims of the Owners of said Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

#### **Section 14.11. Superiority of Mortgage to Insurance Proceeds**

In the event of any substantial damage to or destruction of the improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

#### **Section 14.12. CC&Rs to Conform With Mortgagee Requirements**

It is the intent of this Section that these CC&Rs, the Articles of Incorporation, the Bylaws 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.

### **ARTICLE XV: NON-SEVERABILITY OF COMPONENT INTERESTS**

#### **Section 15.1. Severance Prohibited**

An Owner shall not be entitled to sever their Lot from their Ownership in the Association. Nor shall an Owner be entitled to sever their Lot or their Ownership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Lot can be severally sold, conveyed, encumbered or hypothecated. Any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Lot over the Common Area from the Owner's Lot. Any attempt to do so shall be void.

#### **Section 15.2. Limitation on Interests Conveyed**

Unless otherwise expressly stated, any conveyance of a Lot or any portion of it by an Owner shall be presumed to convey the entire Lot. However, nothing contained in this Section 15.2 shall preclude the Owner of any Lot from creating an estate for life or an estate for years or from creating a co-tenancy or joint tenancy in the ownership of the Lot with any other person or persons.

### **ARTICLE XVI: BREACH AND DEFAULT**

#### **Section 16.1. Remedy at Law Inadequate**

The provisions of the CC&Rs, the Bylaws, the Association Rules and/or resolutions of the Board, as the same may be adopted or amended from time to time, shall constitute enforceable servitudes which shall inure to and bind each Owner, Owner's Family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Association, its officers or Board, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to

strictly comply with any provision of the Governing Documents shall be grounds for: (1) an action to recover sums due for damages, and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board, or by their respective successors in interest.

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

#### **Section 16.2. Nuisance**

Without limiting the generality of Section 16.1, the result of every act or omission whereby any covenant contained in these CC&Rs or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board, and/or any Owner.

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

#### **Section 16.3. Violation of Law**

Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of these CC&Rs and subject to any and all enforcement procedures set forth herein.

#### **Section 16.4. Cumulative Remedies**

The respective rights and remedies provided by these CC&Rs or by law shall be cumulative, and not exclusive. The exercise of any one (1) or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights, or remedies for the same, or any different default, or breach, or for the same or any different failure of any Owner, or others to perform or observe any provision of these CC&Rs, or the Governing Documents.

#### **Section 16.5. Failure Not a Waiver**

The failure of any Owner, the Board, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in these CC&Rs and/or the Association's Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

#### **Section 16.6. Rights and Remedies of the Association**

##### **(a) Rights Generally**

In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, contract purchasers,

employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as an Owner of the Association. The Association's right to undertake disciplinary action against its Owners shall be subject to the conditions set forth in this Section 16.6. The initiation of legal action shall be subject to Section 16.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 5975 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Owner and an opportunity for a hearing pursuant to Subsections 16.6(f) and (g), that said Owner has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Owner that the Owner is deemed to be an Owner not in good standing. Such Owner shall be deemed to be an Owner not in good standing until such time as the Board shall determine in writing that the violation which resulted in the Board's determination that the Owner was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Owner shall again be deemed to be an Owner of the Association in good standing.

#### **(b) Schedule of Fines**

The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and shall be enforceable as a Special Individual Assessment pursuant to Section 8.4.

#### **(c) Definition of "Violation"**

A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

#### **(d) "Meet and Confer" Requirement**

In the event of a dispute between the Association and an Owner concerning an alleged violation of the Governing Documents, either party may request in writing to meet with the other party to discuss the dispute. The Association shall comply with any request by an Owner by notifying the requesting Owner of the date and time for such a meeting within thirty (30) days of receipt of the written request. If such a request is made by the Association to an Owner, the Owner may, but is not required to, respond in writing within ten (10) days agreeing to the requested meeting on the terms set forth in the Association's request. The meeting shall be attended by the Board or the Board's designated representative and the



requesting Owner. If the meeting is not attended by the entire Board, the Owner may appeal any resolution resulting from the meeting to the entire Board. Any agreement between the Association and the Owner as a result of such a meeting shall be reduced to writing and signed by the Association and the Owner. Once signed by both parties, such agreement shall become final, binding and un-appealable. The Association may comply with any "Meet and Confer" request by an Owner pursuant to this Subsection by a disciplinary hearing pursuant to Subsection 16.6(f) below. However, if the meeting is to be in conjunction with a disciplinary hearing, the notice required by Subsection 16.6(g) must be given to the Owner.

**(e) Limitations of Disciplinary Rights**

**(i) Loss of Rights: Forfeitures**

The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or Owner's Family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of: (A) the judgment of a court of competent jurisdiction, (B) a decision arising out of arbitration, (C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or (D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as an Owner of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 16.6(f) and (g).

**(ii) Liens against Owner's Lot**

Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, an 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 Owner and/or the Owner's Family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Owner's Lot enforceable by the sale of the Lot and Improvements under Civil Code Sections 2924, 2924b, and 2924c.

**(f) Hearings**

No penalty or temporary suspension of rights shall be imposed pursuant to this Article XVI unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 16.6(h). However, this Subsection shall not prevent the Board from taking emergency action (such as towing of vehicles) to eliminate an immediate threat to the health or safety of residents or a nuisance causing substantial interference with the property rights of other residents. The required disciplinary hearing shall be scheduled as soon as practicable after any such emergency action has been taken, and if it is determined that such action was unnecessary or improper, the Association shall compensate the Owner for any costs incurred as a result of such action. The Association Rules may specify those violations justifying emergency action pursuant to this subsection.

**(g) Notices**

Any notice of a disciplinary hearing pursuant to Subsection 16.6(f) above shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged

violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Owner shown on the records of the Association. The Association's notice of a disciplinary hearing shall be delivered to the Owner at least ten (10) days prior to any hearing. Notice of the Board's action as a result of the disciplinary hearing must be delivered to the Owner within fifteen (15) days after the Board's decision.

#### **(h) Rules Regarding Disciplinary Proceedings**

The Board shall be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code Section 5925-5965 or comparable superseding statute.

### **Section 16.7. Court Actions; ADR**

Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. As long as Civil Code Sections 5925 - 5965 (or comparable superseding statutes requiring alternative dispute resolution) are in force, this Section 16.7 shall control the initiation of a legal action by the Association and/or its Owners. This Section 16.7 shall automatically be repealed from these CC&Rs should the above Civil Code Sections (or comparable superseding statutes) be repealed by the California Legislature.

#### **(a) Alternative Dispute Resolution**

Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either of those actions coupled with a claim for monetary damages not in excess of the maximum recoverable amount for small claims currently set at \$5,000 for corporations and \$10,000 for individuals, subject to any superseding statutes), the Association and/or Owners shall first comply with the provisions of Civil Code Sections 5925 - 5965, or comparable superseding statutes, relating to alternative dispute resolution. The Board shall have discretion as to the form of ADR which shall be proposed to an Owner to satisfy the requirements of this Subsection and Civil Code Sections 5925 - 5965.

#### **(b) Actions Relating to Assessments**

Disputes related to Association Assessments are expressly exempted from the provisions of this Section 16.7 unless the Owner strictly complies with the requirements of Civil Code Section 5705, or comparable superseding statute.

#### **(c) Small Claims Court Actions**

If any claim, dispute or controversy involves a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of the alternative dispute resolution procedures required by this Section 16.7.

#### **(d) Statement and Admissions during ADR**

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

#### **Section 16.8. Joint and Several Liability of Co-Owners**

If a Lot is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by these CC&Rs shall be joint and several.

#### **Section 16.9. Costs and Attorneys' Fees**

In the event that the Association takes any action because of any alleged breach or default of any Owner or other party hereto under the Association's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association shall be entitled to recover from that Owner (or other party) all costs, including attorneys' fees, the Association incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and attorneys' fees shall include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 8.4.

In the event an action (including an arbitration) is brought by an Owner (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Association's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superseding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

### **ARTICLE XVII: AMENDMENT OF CC&RS**

#### **Section 17.1. Amendment in General**

These CC&Rs may be amended or revoked in any respect by the vote or assent of Owners representing at least a majority of Owners in Good Standing. Notwithstanding the foregoing, the percentage of the Owners necessary to amend a specific clause or provision of these CC&Rs shall be at least the percentage of affirmative votes prescribed in said clause or provision.

#### **Section 17.2. Effective Date of Amendments**

Any amendment to these CC&Rs will be effective upon the recording in the Office of the Recorder of Sacramento County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 17.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under these CC&Rs to amend or revoke any

provision of these CC&Rs, no such amendment or revocation shall become effective unless such consent or approval is obtained.

### **Section 17.3. Reliance on Amendments**

Any amendments made in accordance with the terms of these CC&Rs shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XVIII: GENERAL PROVISIONS**

### **Section 18.1. Effective Date**

These CC&Rs shall become effective upon its recordation in the Official Records of the County of Sacramento, State of California.

### **Section 18.2. Notices**

#### **(a) Mailing as Alternative to Personal Service**

Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows: to an Owner at the Owner's Lot or to such other address as the Owner by designate from time to time in writing to the Association; to the Association at the principal office of the Association manager or to such other address as the Board may from time to time designate in writing to the Association Owners; and to First Mortgagees at the most recent address of the First Mortgagee provided in writing to the Association. Any mailing by the Association based upon the information in its records at the time of the mailing shall be deemed effective for any notice required under the Governing Documents.

#### **(b) Personal Service upon Co-Owners and Others**

Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

### **Section 18.3. No Public Rights in Development**

Nothing contained in these CC&Rs shall be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

### **Section 18.4. Construction of CC&Rs**

#### **(a) Restrictions Construed Together**

All of the covenants, conditions, and restrictions of these CC&Rs shall be liberally construed together to promote and effectuate the fundamental concepts of the Development as set forth in the Recitals of these CC&Rs.

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

**(b) Restrictions Severable**

Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of these CC&Rs shall be deemed independent and severable, and the invalidity or partial

invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision which shall remain in full force and effect.

**(c) Singular Includes Plural/Gender**

The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

**(d) Captions**

All captions, titles or headings used in these CC&Rs are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the CC&Rs.

**(e) Conflicts**

If there is a conflict between the CC&Rs and any other Governing Documents, the provisions of the CC&Rs will prevail.

In the event of any conflict between any of the provisions of this Article XVIII and any other provisions of these CC&Rs, the provisions of this Article XVIII shall control. In the event of any conflict between any of the provisions of these CC&Rs and any other provisions of the Governing Documents, the provisions of these CC&Rs shall control. Further, neither the Articles nor the Bylaws shall be amended so as to be inconsistent with these CC&Rs; and, in the event of any inconsistency, the provisions of these CC&Rs shall control.

**(f) Exhibits**

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

**(g) References to State Statutes**

Any references in these CC&Rs to State Statutes shall be to the referenced statute as in effect on the date that these CC&Rs is recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

**Section 18.5. Power of Attorney**


To the extent necessary to carry out and enforce the provisions of these CC&Rs and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

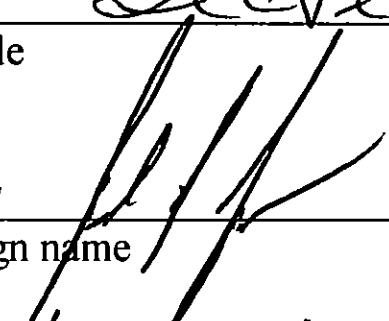
**CERTIFICATION**

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set for herein was duly adopted with the vote or written consent of the Owners, consisting at least of a majority of the Owners.

Dated: April 24, 2019

Nepenthe Association

By:   
sign name  
Stephen P. Huffman  
print name  
Secretary  
title

By:   
sign name  
FRANK J. LOGE  
print name  
PRESIDENT  
title

## ACKNOWLEDGMENT

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

State of California  
County of

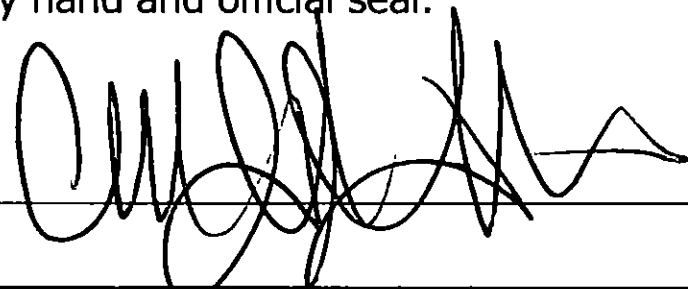
On April 24, 2019 before Crystle Jane Rhine Public Notary  
(insert name and title of the officer)

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

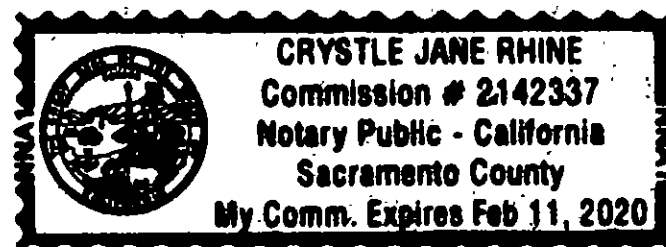
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)





## ACKNOWLEDGMENT

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

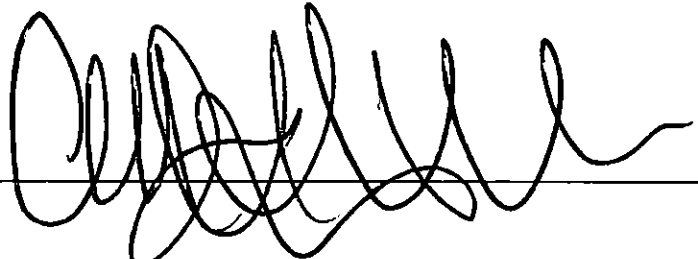
State of California  
County of

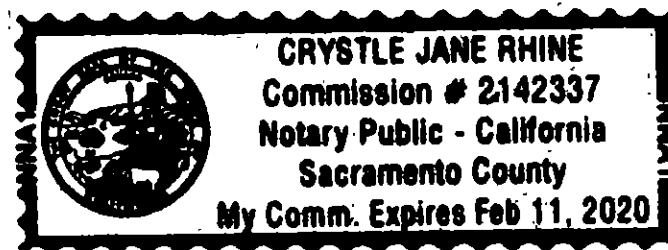
On April 24, 2019 before Crystle Jane Rhine Public Notary  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTIES**

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

Lots 554 through 656, and 657-C as shown on the Plat of Campus Commons Unit No. 6 recorded on April 19, 1972 in the office of the County Recorder, Sacramento County, State of California, in Book 89 of Maps at Page 17.

Lots 658 through 720, and 770-C as shown on the Plat of Campus Commons Unit No. 7A recorded on October 29, 1973 in the office of the County Recorder, Sacramento County, State of California, in Book 95 of Maps at Page 10.

Lots 721 through 767, and 768-C as shown on the Plat of Campus Commons Unit No. 7B recorded on April 16, 1974 in the office of the County Recorder, Sacramento County, State of California, in Book 96 of Maps at Page 13.

Lots 1 through 170, and 14-C as shown on the Plat of Campus Commons Unit No. 8A recorded on April 14, 1976 in the office of the County Recorder, Sacramento County, State of California, in Book 102 of Maps at Page 23.

Lots 1 through 117, and 118-C as shown on the Plat of Campus Commons Unit No. 8C recorded on December 9, 1976 in the office of the County Recorder, Sacramento County, State of California, in Book 108 of Maps at Page 9.

Lots 1 through 60, and 61-C as shown on the Plat of Campus Commons Unit No. 9 recorded on May 28, 1975 in the office of the County Recorder, Sacramento County, State of California, in Book 99 of Maps at Page 18.

Lots 1 through 39 and 40-C as shown on the Plat of Campus Commons Unit No. 11 recorded on January 27, 1978 in the office of the County Recorder, Sacramento County, State of California, in Book 118 of Maps at Page 8.

All that portion of that certain Amended Record of Survey entitled "Portion of Sec. 67, and Sec. A of Rancho Del Paso", recorded in the office of the Recorder of Sacramento County in Book 21 of Surveys, Map No. 4, described as follows:

Beginning at a point on the Easterly line of University Avenue as described in the Deed of the City of Sacramento, recorded December 2, 1965, in Book 5387 of Official Records, at page 430, records of said County, at its intersection with the most Westerly corner of Parcel 4, as shown on the Parcel Map of "Portion of Section 64, Rancho Del Paso & Portion of Campus Commons 3-B" recorded August 6, 1973 in Book 14 of Parcel Maps, at Page 5, records of said County; thence

from said point of beginning, North 56° 17' 09" East 139.64 feet; thence North 33° 37' 52" West 115.00 feet; thence North 56° 22' 08" East 132.68 feet; thence North 33° 37' 52" West 10.00 feet; thence South 56° 22' 08" West 132.68 feet; thence North 33° 37' 52" West 105.00 feet; thence South 56° 22' 08" West 159.27 feet to the Easterly line of said University Avenue; thence along the Easterly line of said University Avenue to the point of beginning.

## **EXHIBIT B**

### **LIST OF DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS BEING AMENDED AND RESTATED BY THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, COVENANTS AND RESTRICTIONS**

Nepenthe Association Declaration of Covenants, Conditions and Restrictions dated May 30, 1972, and recorded in the Official Records of Sacramento County, California on May 31, 1972, in Book 72-05-31, Page 959.

Nepenthe Association Amendments to the Declaration of Covenants, Conditions and Restrictions dated July 19, 1972, and recorded in the Official Records of Sacramento County, California on July 31, 1972, in Book 72-07-31, Page 595.

Nepenthe Association Amendments to the Declaration of Covenants, Conditions and Restrictions dated September 8, 1972, and recorded in the Official Records of Sacramento County, California on September 15, 1972, in Book 72-09-15, Page 176.

Nepenthe Association Amendments to the Declaration of Covenants, Conditions and Restrictions dated September 11, 1975, and recorded in the Official Records of Sacramento County, California on September 15, 1975, in Book 75-09-15, Page 351.

Nepenthe Association Supplemental Declaration of Covenants, Conditions and Restrictions dated December 30, 1976, and recorded in the Official Records of Sacramento County, California on January 7, 1977, as Instrument No. 2914, in Book 77-01-07, Page 984.

Nepenthe Association Supplemental Declaration of Covenants, Conditions and Restrictions dated April 18, 1977, and recorded in the Official Records of Sacramento County, California on April 20, 1977, in Book 77-04-20, Page 618.

Nepenthe Association Supplemental Declaration of Covenants, Conditions and Restrictions dated March 13, 1978, and recorded in the Official Records of Sacramento County, California on March 16, 1978, in Book 78-03-16, Page 757.

First Restated Declaration of Covenants, Conditions and Restrictions of Nepenthe Association, dated April 26, 1990, and recorded in the Official Records of Sacramento County, California on May 23, 1990, in Book 900523, Page 1277.

First Amendment to First Restated Declaration of Covenants, Conditions and Restrictions of Nepenthe Association, recorded in the Official Records of Sacramento County, California on October 4, 1994, in Book 941004, Page 1731.

**Second Amended and Restated CC&Rs of Covenants, Conditions and Restrictions of Nepenthe Association dated March 21, 2002 and recorded in Book 200203727 at Page 1617, Official Records of Sacramento County, California on March 27, 2002.**

**EXHIBIT C**  
**LEGAL DESCRIPTION OF COMMON AREAS**

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

Lot 657-C as shown on the Plat of Campus Commons Unit No.6 recorded on April 19, 1972 in the office of the County Recorder, Sacramento County, State of California, in Book 89 of Maps at Page 17.

Lot 770-C as shown on the Plat of Campus Commons Unit No. 7A recorded on October 29, 1973 in the office of the County Recorder, Sacramento County, State of California, in Book 95 of Maps at Page 10.

Lot 768-C as shown on the Plat of Campus Commons Unit No. 7B recorded on April 16, 1974 in the office of the County Recorder, Sacramento County, State of California, in Book 96 of Maps at Page 13.

Lot 14-C as shown on the Plat of Campus Commons Unit No. 8A recorded on April 14, 1976 in the office of the County Recorder, Sacramento County, State of California, in Book 102 of Maps at Page 23.

Lot 118-C as shown on the Plat of Campus Commons Unit No. 8C recorded on December 9, 1976 in the office of the County Recorder, Sacramento County, State of California, in Book 108 of Maps at Page 9.

Lot 61-C as shown on the Plat of Campus Commons Unit No. 9 recorded on May 28, 1975 in the office of the County Recorder, Sacramento County, State of California, in Book 99 of Maps at Page 18.

Lot 40-C as shown on the Plat of Campus Commons Unit No. 11 recorded on January 27, 1978 in the office of the County Recorder, Sacramento County, State of California, in Book 118 of Maps at Page 8.

All that portion of that certain Amended Record of Survey entitled "Portion of Sec. 67, and Sec. A of Rancho Del Paso", recorded in the office of the Recorder of Sacramento County in Book 21 of Surveys, Map No. 4, described as follows:

Beginning at a point on the Easterly line of University Avenue as described in the Deed of the City of Sacramento, recorded December 2, 1965, in Book 5387 of Official Records, at page 430, records of said County, at its intersection with the most Westerly corner of Parcel 4, as shown on the Parcel Map of "Portion of Section 64, Rancho Del Paso & Portion of Campus Commons 3-B" recorded August 6, 1973 in Book 14 of Parcel Maps, at Page 5, records of said County thence from said

point of beginning, North 56° 17' 09" East 139.64 feet; thence North 33° 37' 52" West 115.00 feet; thence North 56° 22' 08" East 132.68 feet; thence North 33° 37' 52" West 10.00 feet; thence South 56° 22' 08" West 132.68 feet; thence North 33° 37' 52" West 105.00 feet; thence South 56° 22' 08" West 159.27 feet to the Easterly line of said University Avenue; thence along the Easterly line of said University Avenue to the point of beginning.