

The Homes at Deer Hill
(GP01-15, RZ01-15 & TR9369)

Conditions of Approval Compliance Table

Condition	CC&Rs Section
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19	3.4
20	4.3.2
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35	1.12, 7.2
36	1.17, 4.5.1
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58	1.35, 4.5, 4.7
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[DRAFT ONLY - NOT FOR RECORDING PURPOSES]

RECORDED AT THE REQUEST OF AND
WHEN RECORDED, RETURN TO:

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**THE HOMES AT DEER HILL
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)**

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.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See Claims Procedure in Exhibit E. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

THE HOMES AT DEER HILL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)

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EXHIBIT E – Claims Procedure (§§1.14, 4.5 and Article 12)		

1.9 Davis-Stirling Act. The Davis-Stirling Common Interest Development Act as set forth in Part 5 (commencing with Civil Code section 4000) of Division 4 of the Civil Code and any subsequent modifications thereto.

1.10 Declarant. O'Brien Land Company, LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

1.11 Declaration. This Declaration of Covenants, Conditions, and Restrictions (CC&Rs) and any amendments or corrections thereto.

1.12 Design Guidelines and Standards. Guidelines promulgated by the City over the design of and modifications to the Development or any Improvements therein, attached hereto as **Exhibit C**.

1.13 Development. The residential development that is constructed on the property shown on the Map and subject to all the provisions in this Declaration, including the Residential Lots, the Common Area, and all Improvements thereon.

1.14 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedure attached as **Exhibit E** is not a part of the Governing Documents.

1.15 Improvements. Any property in the Development constituting a fixture within the meaning of Civil Code section 660.

1.16 Landscape Maintenance Agreement. The "Landscape Maintenance Agreement" recorded in the official records of Contra Costa County, California, regarding the installation and maintenance of existing landscaping and the preservation and protection of trees within the Development to be maintained by the Association as described in the Landscape Maintenance and Pruning Guidelines described in **Section 1.17**.

1.17 Landscape Maintenance and Pruning Guidelines. Guidelines for the operation and maintenance of the landscaping and trees within the Development that are to be maintained by the Association. The Landscape Maintenance and Pruning Guidelines are attached hereto as **Exhibit D**.

1.18 Lot or Residential Lot. Lots 1 through 44 as shown on the Map and all Improvements thereon.

1.19 Maintain, Maintained, Maintaining or Maintenance. Unless expressly stated otherwise, "maintain", "maintained", "maintaining" or "maintenance" as used in this Declaration includes inspection, cleaning, maintenance, repair, upgrading and/or replacement.

1.20 Map. The subdivision map entitled " _____ " filed for record in Contra Costa County, California, on _____, 201_, in Book _____ of Maps at pages _____, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey.

1.21 Member. A member of the Association.

1.22 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.23 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.24 Occupant(s). Any Person entitled to use and reside in a Lot pursuant to an ownership right or any lease, license or other similar agreement with the Owner of the Lot.

1.25 Open Space Easement Areas. The areas within Parcels M and K encumbered by the easement identified as “_____” on the Map.

1.26 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.

1.27 Paseo or Paseos. The areas within certain Lots and Common Area Lots that are subject to the paseo easements designated “___” on the Map.

1.28 Permittee(s). All Owners and Occupants and their agents and invitees.

1.29 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.30 Recreational Facilities. Certain amenities for the common use of Owners and Occupants, including but not limited to seating areas, tables, and monuments.

1.31 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 5.6.2**.

1.32 Solar Collector. A Solar Collector as defined in Section 25981 of Chapter 12 of Division 15 of the Public Resources Code and any subsequent modifications thereto.

1.33 Solar Rights Act. The Solar Rights Act as set forth in Part 1 (commencing with Civil Code section 714) of Division 2 of the Civil Code and any subsequent modifications thereto.

1.34 Solar Shade Control Act. The Solar Shade Control Act as set forth in Chapter 12 (commencing with Public Resources Code section 26980 of Division 15 of the Public Resources Code and any subsequent modifications thereto.

1.35 Stormwater Control Plan. The “Stormwater Control Plan for The Homes at Deer Hill, Lafayette” filed in the records of Contra Costa County, California, for maintenance of the Development’s “Stormwater Facilities,” as the term is defined therein and incorporated by reference.

1.36 Stormwater O&M Manual. The “Stormwater Facilities Operation and Maintenance Plan” dated _____, 201__ prepared by BKF Engineers, for the operation and maintenance of the stormwater treatment facilities in the Development, attached as Exhibit __ to the Stormwater Control Plan.

1.37 Water Use Reduction Plan. The guidelines and requirements promulgated by the City to reduce water consumption and employ alternative irrigation sources, including use of gray water as described therein and in **Section 2.12**.

1.38 Wild Rye Grass Maintenance Plan. The portion of the “Mitigation Monitoring and Reporting Program” (“MMRP”) on file with the City that describes the monitoring and maintenance of native grasslands and wild Rye Grass within the Development.

ARTICLE 2

Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 4175 and consists of the forty-four (44) Residential Lots and the Common Area.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Association. The Association owns the fee (perpetual) estate in the Common Area.

2.3 Easements. The Development is subject to the easements described in this **Section 2.3** and the general easement rights in **Section 2.4**.

2.3.1 Common Area Easements. Declarant grants to the Owner of each Lot an easement in favor of the Owner's Lot as the dominant tenement over the Common Area as the servient tenement for: (i) ingress and egress over the walkways and drive aisles within the Common Area; (ii) support from any land or Improvements within the Common Area providing structural support to the dominant tenement; (iii) access to and use of (including the right to install or maintain) any utility lines, cables, wires, pipes, meters, or other equipment installed within, on or over the Common Area that provides utility service to the dominant tenement, including water, electricity, gas, telecommunications, storm drainage and sanitary sewer services and life safety system; and (iv) access to and use of the Common Area by Declarant and its contractors, subcontractors and other agents to construct, maintain and market the Lots.

2.3.2 Drainage Easement. Declarant grants to the Owner of each Lot and to the Association as the Owner of the Common Area an easement in favor of the Owner's Lot and the Common Area as the dominant tenement over each other Lot and the Common Area as the servient tenement for: (i) the retention or maintenance of any storm drainage system installed on the servient tenement as a part of the original construction of the Development; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development.

2.3.3 Utility Easement. Declarant grants to the Owner of each Lot an easement in favor of the Owner's Lot as the dominant tenement over each other Lot as the servient tenement that contains any utility equipment that serves the dominant tenement for the installation, maintenance and retention of any utility lines and equipment installed within the servient tenement as a part of the original construction of the Development that provides utility service to the dominant tenement, including, but not limited to, electricity, gas and water. If the easement is not shown on the Map, the easement is limited to the area within which the utilities were originally installed or is relocated with the prior written consent of the Owner of the servient tenement.

2.3.4 Encroachment and Maintenance Easement. Declarant grants to the Owner of each Lot an easement in favor of the Owner's Lot as the dominant tenement over each adjoining Lot as the servient tenement for the purposes of: (i) access to the servient tenement in order to perform any maintenance as described in **Section 4.1** and access to that portion of the servient tenement as may be reasonably necessary to maintain (including repainting) any portion of any Improvement on the dominant tenement that is located on or within three feet of the common boundary line; and (ii) accommodating any encroachment of roof overhangs, windows, eaves or other residential structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, and minor original construction changes during the course of construction, and any encroachment easements granted in accordance with **Section 2.6**. Prior to entering the servient tenement for purposes of maintenance, the Owner or Occupant of the dominant tenement shall provide the Owner or Occupant of the servient tenement with at least three (3) days' prior notice except in the event of an emergency. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant and such reasonable access to the servient tenement in order to maintain the encroaching Improvement. If a structure on any Lot is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.3.5 Association Maintenance Easement. Declarant grants to each Owner an easement in favor of the Owner's Lot as the dominant tenement over each other Lot as the servient tenement, including Side Yard Areas described in **Section 2.3.8**, for purposes of providing the agents of the Association such access as may be necessary to perform the Association's maintenance duties as described in **Section 4.3**, including maintenance of the Open Space Easement Areas and unfenced yard areas.

2.3.6 Clustered Mailbox Easements. The Development has "clustered" mailboxes in which two or more mailboxes are located in the Common Area that serves two or more Lots. Declarant grants to each Owner an easement in favor of the Owner's Lot as the dominant tenement over the Common Area

containing a clustered mailbox as the servient tenement for the installation, retention and/or maintenance of the clustered mailbox that serves the dominant tenement and for access to the servient tenement to deposit and retrieve mail. The easement is located in the area within the servient tenement where the clustered mailbox was originally installed by Declarant or as relocated with the prior written consent of the Owner of the servient tenement. The clustered mailboxes shall be maintained as described in **Section 4.3.5**.

2.3.7 Map Easements. Declarant grants to each Lot an easement in favor of the Owner's Lot as the dominant tenement over each other Lot and the Common Area as the servient tenements for the easements described on the Map that benefit the dominant tenement and burden the servient tenements as shown on the Map. The Lots and Common Area also are subject to and/or benefit from the applicable public easements shown on the Map.

2.3.8 Side Yard Easements. Certain Lots are subject to side yard easements in the areas designated " _____ " on the Map (the "Side Yard Area") for the use of the adjoining Lot. Declarant grants to the Owner of the adjoining Lot an easement in favor of the Owner's Lot as the dominant tenement over the Lot subject to the easement shown on the Map as the servient tenement for access to and use of the Side Yard Area subject to each of the following terms and conditions:

(i) as part of the original construction of the Development, Declarant constructed concrete, irrigation lines, and drainage lines, among other Improvements, and Owners are prohibited from modifying such Improvements except with the prior approval of the Architectural Committee or Board as described in other provisions of this Declaration. The Owner of the dominant tenement may install the following Improvements in the Side Yard Area, subject to the requirements of **Section 4.5 and Article 7**: landscaping, additional irrigation lines, additional drainage and connector lines, terrace or deck not exceeding _____ feet in height with railings not exceeding _____ feet in height, and normal and customary patio structures that will not unreasonably interfere with the rights retained by the Owner of the servient tenement as described herein;

(ii) the Owner of the dominant tenement shall not affix or attach any property or vegetation to the wall of any structure situated within the servient tenement without the prior written consent of the Owner of the servient tenement, any landscaping installed adjacent to the exterior face of the residence on the servient tenement shall be irrigated using a drip irrigation system so that there is no overspray or watering onto the exterior face of the residence on the servient tenement; and

(iii) the Owner of the servient tenement and the Association retain the right to enter the Side Yard Area on such notice as may be reasonable under the circumstances to maintain (including repainting) the abutting building wall or roof (including windows, eaves, gutters, leaders, and drainage pipes) and any other Improvements located in or immediately adjacent to the Side Yard Area that serve the servient tenement;

(iv) the Owner of the servient tenement retains the right to encroach onto the Side Yard Area with eaves, overhangs, gutters, leaders, the opening of windows, and similar encroachments that were part of or replacements to the original Improvements placed on the servient tenement;

(v) the Owner of the servient tenement retains the right to connect into and use the drainage line installed in the Side Yard Area with underground drainage connection lines; and

(vi) the fence separating the Side Yard Area from the servient tenement shall be considered a good neighbor fence subject to the provisions of **Section 4.2**, and the drainage line within the Side Yard Area that provides drainage for both Lots shall be jointly maintained in a similar manner.

2.3.9 Paseo Easement.

2.4 General Easement Rights. Each easement described in **Section 2.3** shall be subject to, and construed in accordance with, the following provisions, except as otherwise expressly provided for elsewhere

in this Declaration: (i) the easement shall be appurtenant to the dominant and servient tenements and any transfer of a dominant or servient tenement automatically transfers the easement appurtenant thereto regardless of whether the easement is described in the instrument of transfer; (ii) the easement is in perpetuity unless otherwise terminated by operation of law; (iii) no easement may be modified or relocated except with the written consent of the Owners of the dominant and servient tenements; (iv) except as otherwise provided in **Article 4**, the Owner of the dominant tenement shall maintain the Improvements within any easement that exclusively benefits the dominant tenement; (v) the Owner of the dominant tenement shall indemnify, defend and hold harmless the Owner of the servient tenement against any claims, liabilities, damages, judgments or expenses, including reasonable attorneys' fees (collectively, "Claim"), from any injury or death to any Person or damage to any property that occurs in connection with the use or maintenance of the easement as a result of any act or omission by the Owner or Occupant or their Permittee except to the extent the Claim is a covered claim under insurance maintained by the Association (any deductibles or costs in excess of available coverage amounts shall be paid by the Owner); (vi) all easement uses shall comply with the covenants, rights, duties and restrictions set forth in this Declaration, with all Applicable Laws and with any Rules adopted by the Board under the provisions of **Section 5.6.2**; (vii) each easement granted hereunder exists by virtue of this Declaration, without the necessity of confirmation by any other documents; (viii) the easements are nonexclusive unless expressly provided otherwise; (ix) no easement provided or reserved under this Declaration shall restrict the Owner of the servient tenement from granting other easements or interests therein as long as the other easement or interest does not unreasonably interfere with the easement rights of the dominant tenement; (x) easement access and use rights are subject to the rights reserved in **Section 2.5** and the rights of Declarant as described in **Section 13.10**; and (xi) if the dominant and servient tenements are owned by the same Owner, the easement shall be effective automatically on the date the dominant and servient tenements no longer are owned by the same Owner regardless of whether the instrument of transfer separating the ownership describes the easement.

2.5 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot and the Common Area, as the case may be, are subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct within the Development, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld, conditioned or delayed;

(ii) the right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least thirty (30) days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the thirty (30) day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance of any Improvement or landscaping located on the Lot;

(iv) the rights reserved in **Sections 2.6, 2.8 and 13.10**;

(v) the right of the Association to adopt and enforce Rules as described in **Section 5.6**;
and

(vi) the right of the Association to suspend an Owner's right to use any Recreational Facilities as described in **Sections 1.30 and 5.6**; limit the number of guests to use the Common Area and any Improvements therein; and assign, rent, license or otherwise designate and control the use of any Recreational Facilities located on the Common Area.

2.6 Authority Over Common Area. The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any

Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area (except exclusive use Common Area), in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics, and other telecommunications equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Lots in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (a) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot or the use of any Recreational Facilities described in **Section 1.30** located on the Common Area without the prior written consent of that Owner; or (b) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 4600. If Member approval is required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the exclusive use Common Area and shall comply with the secret balloting requirements of Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.6** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **Article 10**.

2.7 Delegation of Use Rights. An Owner's Permittees may use and enjoy any Common Area Improvements, including any Recreational Facilities. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner leases his or her Lot, neither the Owner nor the Owner's Permittees shall be entitled to use any Common Area Improvements, including the Recreational Facilities, other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the Occupant and Occupant's Permittees during the term of the rental agreement.

Any Owner who rents his or her Lot must comply with the requirements of **Section 3.2**.

2.8 Conveyance of Common Area. The Common Area shall be conveyed to the Association on or before the date the Declarant first conveys title to a Lot that triggers the commencement of assessments under **Section 6.7**. The Common Area as the servient tenement is subject to the applicable easements described in **Section 2.3**, to the rights reserved in **Section 2.5**, and the rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Common Area as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Board may adopt Rules regulating the use of the Common Area provided such Rules do not unreasonably interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration.

2.9 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.10 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Lots as well as noises from outside the Development, including the sports park adjacent to the Development.

2.11 Bicycle and Pedestrian Trail. The bicycle and pedestrian trail within the _____ easement (“_____”) shown on the Map is subject to access by the general public but shall be maintained by the Association as described in **Section 4.3.7.**

2.12 Water Use Reduction Plan.

ARTICLE 3 Restrictions

3.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of home offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction.

3.2 Renting. The Owner may rent his or her Lot provided each of the following conditions is satisfied:

- (i) the rental agreement must be in writing;
- (ii) all rentals shall have a minimum lease term of six (6) months;
- (iii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and
- (iv) before commencement of the rental agreement, the Owner shall provide the Association with the names of the Occupants who will reside on the Lot and the address, telephone number and email address of the Owner.

Any Owner that rents his or her Lot shall keep the Association informed at all times of the Owner's address, telephone number and email address. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules, and all renting Owners shall provide these documents to their tenants. Renting Owners shall also alert tenants to replace the air filters described in **Section 4.3.2.** Any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant Occupant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the Occupant. An Owner may be fined for violation of this **Section 3.2** to the extent permitted by this Declaration.

3.3 Nuisance. No activity shall be conducted in any Lot or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the Occupants of any other Lot.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked within the Development unless parked within an enclosed garage. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes.

Occupants shall park their vehicles in their garages and are prohibited from parking within Common Area parking spaces except with written permission from the Board so that the Common Area parking spaces are available exclusively for guest parking. The Association may require Owners and Occupants to provide information to identify the authorized vehicles for each Lot for the purpose of tracking parking within the Development. No garage may be converted into any use that would prevent its use for parking the number of vehicles the garage was originally designed to contain. Parking on driveway aprons is prohibited except with written permission of the Board, and vehicles must fit completely within the driveway apron and may not encroach onto the private street.

The Board may adopt Rules regulating parking in the Common Area, including regulations that impose time limits and prohibit the general public from the Common Area parking spaces. No vehicles with commercial signage, no unregistered vehicles, no vehicles with expired registration, and no inoperable or dilapidated vehicles may be parked within the Development at any time. The Common Area streets shall have appropriate signage, curb paint and striping indicating "No Parking" or "No Parking – Fire Lane," as required by the City.

Garage access and parking spaces may not be sufficient in size to accommodate larger vehicles, including in particular sports utility vehicles and vans. In addition, certain parking spaces may be smaller in size than a standard parking space and certain garages and spaces may have limited vertical clearance. It is each Owner's sole responsibility to confirm that the garage is accessible for the Owner's vehicle(s), that the Owner's vehicle(s) can fit within the Owner's garage, and that the Owner's vehicle(s) can comply with the restrictions contained herein.

3.5 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto. In addition and without limiting the foregoing or any other right or remedy available to the Board, the Board may impose monetary penalties for violation of any parking restrictions or Rules.

3.6 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

- (i) no animal shall be maintained for any commercial purposes;
- (ii) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;
- (iii) dogs shall be on a leash not in excess of six (6) feet at all times, held by a person capable of controlling the dog, while within the Common Area;
- (v) the owner of the animal shall immediately clean up after his or her animal;
- (vi) all pet waste must be disposed of in the pet owner's trash containers; and
- (vii) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Lot.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any Occupant, or otherwise interferes with the quiet use and enjoyment of Occupants of any Lot. The Board may

find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.

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

(i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with Applicable Laws regulating restrictions on Antenna Equipment; and

(ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

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

3.8 Signs. Subject to the provisions of **Section 13.10** and Civil Code Sections 712, 713 and 4710, no sign of any kind shall be displayed from any Lot that is visible from any other Lot except any sign approved by the Board either on an individual basis or pursuant to Rules adopted by the Board or as may be otherwise authorized by Applicable Laws.

3.9 Window Coverings. If installed, window coverings shall be normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be solid (not patterned) white or off-white or light or dark wood unless approved otherwise in writing by the Architectural Committee.

3.10 Vehicle Maintenance. There shall be no maintenance performed on any vehicle except for any emergency repairs that are necessary in order to move the vehicle to a proper repair facility or as authorized by the Board in writing.

3.11 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of **Article 7**, the Design Guidelines described in **Section 1.12**, and all Applicable Laws.

3.12 Not a Gated Community. This Development is not a gated community. There is no restriction on access for vehicles, pedestrians or cyclists to the Common Area, provided that private property within each Lot may be fenced or gated in accordance with Applicable Laws.

3.13 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any Applicable Laws. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.14 Drilling. No drilling, mining, or quarrying operation shall be conducted on any Lot or the Common Area at any time.

3.15 Storage Restrictions. No porch shall be used for storage purposes, including storage of bicycles, toys, shoes, exercise equipment, or similar equipment. Only normal and customary deck furniture that is in good condition and repair may be placed within any porch. The Board may adopt Rules regulating the type and quantity of normal and customary furniture that may be placed within the porch. Barbeques are prohibited from porches, and may be used within courtyard areas of an Owner's Lot instead. In addition, the

Board may adopt Rules regulating the type, quantity and size of planters and/or plants placed within any porch, including Rules that restrict or prohibit planters and/or plants.

3.16 Post Tension Concrete Slab System. The residences have been constructed using a post tension concrete slab system (“System”), which involves placing a grid of steel cables under high tension in the concrete slab foundation of each residence. Any attempt to modify, alter or otherwise tamper with the foundation (for example, saw cutting, drilling or installation of a subterranean safe) is very hazardous and might result in serious injury or damage. No Owner or Occupant of any Lot shall: (i) cut into or otherwise tamper with the System; or (ii) knowingly permit or allow any other Person to cut into or tamper with the System. In addition, the Owner shall disclose the existence of the System to any Occupant of the residence. Any disturbance of the System shall occur only after consultation with a qualified consultant.

3.17 Use of Drones. Unless otherwise authorized by Rules adopted by the Board, including Rules regulating the commercial use of drones (e.g., Amazon deliveries), Occupants are prohibited from operating drones within the Development. For purposes herein, “drone” refers to any powered aerial vehicle controlled remotely.

3.18 Restricted Development Areas. Certain areas located on Parcels M and K are Restricted Development Areas identified as the areas within the open space easement (“___”) shown on the Map. These areas shall remain in a natural, scenic, and open-space condition and preserve wildlife corridors, habitat, nesting areas, and watershed value that exist as of the construction of Improvements by Declarant in these areas. No Improvements other than those approved by the City may be constructed in these Restricted Development Areas.

3.19 Solar Collectors, Restriction and Requirements. As part of the original construction of the Development, Declarant has constructed the roof of each residence to be “solar ready,” which means that Solar Collectors described in **Section 1.32** have been installed in appropriate area on the roof. No Solar Collector may be installed or maintained in the Common Area by any Owner or Occupant except in compliance with the provisions of **Article 7**, this **Section 3.19**, and all Applicable Laws, including but not limited to the notice requirements set forth in the Solar Shade Control Act and the equipment standards set forth in the Solar Rights Act. Solar Collectors may only be installed in and/or relocated to the locations on the roof specifically permitted by the Association.

The Architectural Committee may impose reasonable Rules that restrict the installation of additional or replacement Solar Collectors to those Solar Collectors approved by the Association, and may impose other reasonable restrictions in compliance with Civil Code sections 714 and 714.1. Each Owner who installs a Solar Collector shall be responsible for any damage caused by the Owner’s Solar Collector. If the Solar Collector must be removed to maintain or repair the roof, the Owner shall be responsible for all costs to remove and reinstall the Solar Collector.

3.20 Solar Shade Restrictions. After the installation of a Solar Collector, neither an Owner of an adjacent Lot nor the Association (in the case of adjacent Common Area) shall allow trees, shrubs, or other landscaping to cast a shadow over the Solar Collector in violation of the Solar Shade Control Act. The restrictions of this **Section 3.20** are intended to comply with the Solar Shade Control Act and any modifications thereto and, therefore, do not apply to trees, shrubs or landscaping planted prior to the installation of an adjacent Solar Collector. The installation of particular trees or shrubs by the Association on Common Area adjacent to a Solar Collector shall not be deemed to waive or alter the provisions of this **Section 3.20**, and neither the Association nor the Architectural Committee shall be liable to the Owner of the Solar Collector for any such installation.

ARTICLE 4
Maintenance Obligations

4.1 Owner's Maintenance Obligations. Except for that portion of any Lot maintained by the Association as described in **Section 4.3**, each Owner shall maintain the Owner's Lot and all Improvements thereon, including the Improvements described in **Sections 4.1.1 through 4.1.5**, in good condition and repair at all times. Shared Improvements with adjoining Lot Owners, including fences or walls on a common boundary between adjoining Residential Lots, shall be maintained as described in **Section 4.2**. All other fences or walls on the Residential Lots, including fences or walls located on a common boundary line between the Owner's Lot and the Common Area, shall be maintained by the Owner. Each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the maintenance standards and guidelines described in **Section 4.4**, and (ii) commonly-accepted homeowners' maintenance obligations.

Each Owner shall allow agents of the Association access to the Owner's Lot for purposes of performing the Association's maintenance obligations under this Declaration. If any Owner fails or refuses to provide access, the Owner shall be responsible for any maintenance costs that could have been avoided if access had been provided, and the Association may levy a reimbursement assessment against the Lot to recover the additional costs.

If any portion of any Improvement on a Lot that is maintained by the Owner is damaged or destroyed as a result of a covered loss under the property insurance maintained by the Association as described in **Section 8.3**, the Association, on request from the Owner, immediately shall take the appropriate steps to process the necessary claim. On receipt of any insurance proceeds allocated to the Improvements maintained by the Owner, the Association shall distribute the proceeds to the Owner subject to the rights of the Owner's Mortgagee and subject to such reasonable terms and conditions as may be imposed by the Association to assure that the proceeds are used to make the necessary repair or restoration. For example, the Association may distribute the proceeds to an insurance trustee or financial institution for distribution in accordance with normal and customary construction loan practices.

If any Owner fails to maintain his or her Lot as required by this **Section 4.1** or by **Section 4.2**, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance. The Association may levy a reimbursement assessment against the Lot in the manner described in **Section 6.5**.

4.1.1 Residences. Each Owner shall maintain the residence within the Owner's Lot. Owners are solely responsible for their garage door openers. Owners are to maintain and replace the MERV-10 filters installed in the HVAC air filtration system as described in **Section 4.3.2**.

4.1.2 Utilities. Unless maintained by a government entity or regulated utility company, each Owner shall maintain any portion of an interconnected system, such as a utility line, that exclusively serves the Owner's Lot, including gas, water, sewer, electrical, and telecommunication lines and equipment.

4.1.3 Storm Drain System. As described in **Section 4.7**, the Association shall maintain that portion of the drainage system located in the unfenced portion of the Owner's Lot unless maintained by a regulated utility company or a government agency, provided that each Owner shall perform such maintenance of the drainage system within the fenced portions and courtyards on the Owner's Lot as described in **Section 4.4**.

4.1.4 Solar Collectors. Each Owner shall be responsible for maintaining all parts of the Solar Collector, including but not limited to solar racks, solar panels, inverters, and any other equipment. Maintenance shall be performed in compliance with **Section 4.5**.

4.1.5 Landscaping. Each Owner shall maintain the landscaping and irrigation systems located within the fenced areas and courtyards of each Lot.

4.2 Good Neighbor Fences and Walls. As part of the original construction of the Development, Declarant constructed fences and walls on or about the common boundary line between two adjoining Lots. Lot Owners shall jointly share the maintenance of the fences and walls. The cost of the maintenance shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain the fences and walls.

Any dispute between the adjoining Lot Owners regarding the need for maintenance, the quality or type of maintenance, the allocation of costs, or any related issues shall be submitted to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. The dispute first shall be submitted to non-binding mediation for resolution. If the dispute cannot be resolved through mediation, the dispute shall be submitted to binding arbitration. Unless the parties agree otherwise, the dispute shall be heard by a single arbitrator in Contra Costa County. In the arbitration proceeding, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto. The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

4.3 Association's Maintenance Responsibilities. The Association shall maintain the Improvements and landscaping described in **Sections 4.3.1 through 4.3.7** in compliance with each of the following in performing the Association's maintenance obligations: (i) the maintenance standards and guidelines described in **Section 4.4**; (ii) the applicable Best Management Practices in the Storm Water Control Plan described in **Section 4.7**; (iii) the Landscape Maintenance and Pruning Guidelines described in **Section 1.16**; and (iv) commonly-accepted homeowners' maintenance obligations.

4.3.1 Common Area and Paseos. The Association shall maintain the Common Area, Paseos, and all Improvements and landscaping thereon, including but not limited to, private streets and drive aisles, parking spaces, retaining walls, Common Area fences, pavement and walkways, lighting fixtures and utilities serving the Common Area and Paseos and related equipment, Recreational Facilities, and utilities serving the Common Area.

Government entities and utility companies have been granted the right to access certain easement areas within the Development on the Map and through this Declaration. The government entities and/or utility companies may remove pavement, landscaping, and other Improvements in the exercise of their rights, and may have no obligation to replace them to the same condition as before the work was performed. The cost of such repairs and replacement may fall upon the Association, including but not limited to replacing decorative pavement or concrete within the sidewalks or other Common Areas of the Development.

4.3.2 Air Filtration System. As part of the initial construction of the Development, the Declarant has installed high efficiency Minimum Efficiency Reporting Value (MERV) filters in each residence. The Association shall provide a MERV-10 filter to each Lot Owner at times consistent with the manufacturer's recommended replacement schedule, accompanied by a notice in substantially the same form as attached hereto as **Exhibit B** to advise each Owner of the purpose of the filter and how to install it. Owners are to maintain and replace the MERV-10 filters installed in the HVAC air filtration system to reduce exposure to pollutants.

4.3.3 Private Utilities. The Association shall maintain the private storm drainage systems in the Common Area and water and sanitary sewer systems within the Common Area not maintained by a government agency or regulated utility company. The Association shall also maintain the gray water facilities and equipment described in **Section 1.37** within the Common Area and any storm drain collector lines serving multiple Lots.

4.3.4 Landscaping; Wild Rye Grass Maintenance. The Association shall maintain the landscaping and irrigation systems located within the Common Area and within the unfenced areas of each Lot.

The Association shall also be responsible for the maintenance of the Wild Rye Grass Maintenance Plan described in **Section 1.35**. The monitoring program described in the Plan shall be implemented by a qualified biologist to oversee successful establishment of the native grasslands that have been restored, as shown in the MMRP, and shall define both short-term and long-term requirements. Permanent monitoring transects shall be established as part of the program, and vegetation data shall be collected in the spring and summer months when plan identification is possible. Photo stations shall be established along each monitoring transect, and photographs taken every year during the required monitoring period. The biologist shall describe the performance standards, success criteria, and measures necessary to sustain the Rye Grass. The biologist shall establish monitoring transects over grass area shown in the exhibit, and monitored on an annual basis. Within a three-year period, native grass shall be successfully established over all treatment areas and shall comprise a minimum sixty percent (60%) of the relative cover. Monitoring shall be extended where the success criteria are not met, and the minimum 1:1 replacement ratio is not reached. The Plan and its requirements may be modified to require further measures if monitoring shows that performance standards are not being met.

4.3.5 Clustered Mailbox Maintenance. The Association shall maintain the clustered mailboxes within the Development, provided that each Owner shall be responsible for maintenance of the lock on the Owner's mailbox and replacement of any lost or damaged mailbox keys.

4.3.6 Video Surveillance System. As part of the initial construction of the Development, the Declarant has installed a high definition video surveillance system at the entry/exit of the Development to provide continuous color video of the entry/exit area along with a license plate recognition camera that allows the information to be recorded and stored for one month. The Association is responsible for maintaining and insuring the surveillance equipment, including without limitation a steel mounting pole, cameras, power supply (from the common meter), video recorder, wireless internet hardware, and any structures that protect or shield the aforementioned equipment. The Association shall retain a qualified consultant to test and maintain the equipment on a regular basis, and shall be responsible for providing utility and wireless internet service for the operation of the surveillance system.

The fact that the Declarant has installed a video surveillance system to comply with City requirements does not mean that the Development is a secured area. Most of the Development is open and accessible by the public. The Association, Board Members, Officers, and Declarant have no duty to provide any security measures in the Development and have no responsibility for the criminal or negligent acts of others. Owners, Occupants, Permittees and visitors must access and/or reside in the Development at their own risk.

4.3.7 Bicycle and Pedestrian Trail. The Association is also responsible for maintaining the Bicycle and Pedestrian Trail described in **Section 2.11** in compliance with its obligations under the Landscape Maintenance Agreement described in **Section 1.16** that has been or will be entered into by the City and Declarant. The Association is responsible for maintaining and insuring the trail and pathway lighting facilities within the Bicycle and Pedestrian Access Easement shown on the Map using best maintenance practices. This **Section 4.3.7** is a brief summary only of the Landscape Maintenance Agreement. In the event of any conflict between the Landscape Maintenance Agreement and this **Section 4.3.7**, the Landscape Maintenance Agreement shall control.

4.4 Specific Maintenance Obligations. Attached to this Declaration as **Exhibit A** is a list that identifies whether the Association or the Lot Owner is responsible for the maintenance of certain Improvements within the Development. The purpose of this List is to identify whether the Association or the Owner has the maintenance responsibility over specific Improvements. The List serves as an aid to the Association and the Owner. The Board from time to time may update **Exhibit A** by recording an amended **Exhibit A** in the records of Contra Costa County, California. The consent of the Members is not required as long as the allocation of the maintenance responsibilities as reflected in the amended **Exhibit A** is not inconsistent with the maintenance responsibilities described in **Sections 4.1, 4.2 and 4.3**.

4.5 Maintenance Standards and Guidelines.

4.5.1 Maintenance Standards. All Improvements in the Development shall be maintained at all times: (i) in good condition and repair, ordinary wear and tear excepted; (ii) in a neat, clean and sanitary condition; and (iii) in proper operating condition.

The City approved certain Landscape Maintenance and Pruning Guidelines for this Development, which are attached hereto as **Exhibit D**, and entered into a Landscape Maintenance Agreement as described in **Section 1.16** for areas maintained by individual Owners and the Association that are intended to address the potential for inappropriate pruning or removal of screening vegetation relied upon to substantially conceal the Development. Landscaping shall be maintained in a healthy and weed-free condition and shall comply with the Landscape Maintenance and Pruning Guidelines and Landscape Maintenance Agreement described in **Sections 1.16** and **1.17**. Annual monitoring reports shall be prepared by the qualified biologist to comply with the Wild Rye Grass Maintenance Plan and submitted to the City's Planning & Building Services Division by December 31 of each monitoring year, for a minimum of five (5) years and until the defined success criteria are met. The annual reports shall summarize the results of the monitoring effort, performance standards, and any required contingency measures, and shall include photographs of the monitoring transects and program success. Maps shall be included in the monitoring report to show the location of monitoring transects and photo stations. Dying or dead vegetation shall be immediately removed and replaced. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. To the extent that Solar Collectors described in **Section 1.32** are installed in the Development before the planting of any trees or shrubs, the Association (with respect to the Common Area) and each Owner of a Lot shall take appropriate steps to prune, cut back, and otherwise limit the height and fullness of trees, shrubs and other landscaping to the extent required by the Solar Shade Control Act. Appropriate steps shall be taken by the Person(s) responsible to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected or excessive watering. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. Landscaping shall be maintained to minimize the use of fertilizers, herbicides and pesticides. Each Owner, and the Association, is encouraged to use integrated pest management practices (less toxic pest management) as a first step in maintaining landscaping. Chemical pesticides and fertilizers should be employed only as a last step in managing weeds and other pests.

Each Owner shall at all times keep the drainage system, including any intake drains, catch basins or area basins located on the Owner's Lot, free and clear of debris at all times. No action shall be taken by any Owner or Occupant that would (i) interfere with the operation of the drainage system in any manner, (ii) modify any flow pattern, or (iii) alter the grading on a Lot, unless approved by the Board and any applicable governmental entity. All maintenance of the drainage system shall comply with the requirements of the Storm Water Control Plan described in **Section 1.35**.

The exterior surfaces of the residences (including the siding, rain gutters, and downspouts) shall be periodically repainted and the roof materials periodically replaced in accordance with a schedule that maintains substantially the same quality of appearance as existed at the time original construction was completed and no less frequently than the periodic repainting and re-roofing recommendations of the manufacturer and/or the Guidelines described in this **Section 4.5**. In addition, each residence shall be periodically inspected for pests, including construction material destroying pests or organisms and, if necessary, immediate appropriate corrective action shall be taken therefor. Maintenance must include periodic inspection of porch surfaces for evidence of leaks and the immediate repair of any porch surface that is damaged or penetrated in any manner. Owners must take appropriate precautions to prevent the membrane from being penetrated by sharp objects.

No Owner shall excavate or otherwise disturb any Improvement or landscaping on any other property without the prior written consent of that property Owner, including that, if the property is Common Area, the Association may require the Owner to comply with such terms and conditions as the Board may direct prior to commencement of any work within any Common Area.

4.5.2 Maintenance Guidelines. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, and the Storm Water Control Plan described in **Section 1.35**, for the inspection and maintenance of certain Improvements and personal property situated within the Development with respect to the

Improvements and landscaping to be maintained by that party (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Lot, shall deliver the Guidelines pertaining to the Improvements and any landscaping to be maintained by the Owner to the transferee on or before title is transferred. The Board periodically and at least once every three (3) years shall review and update the Guidelines for Improvements and any landscaping maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**.

Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant as described in Section 4 of the Claims Procedure attached as **Exhibit E** hereto. Declarant may charge a reasonable fee for providing replacement copies.

4.5.3 Water Intrusions. In order to reduce the potential for water damage (including mold growth) within the residence, each of the following steps shall be performed: (i) periodic inspection of the residence for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediate notification to the Association and, if applicable, appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintenance of proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodic inspection of refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the residence (including Mold growth); (v) periodic inspection of carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replacement of heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the residence.

4.6 Trash Removal. Each Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal of trash from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which shall be kept in the areas within the garage or otherwise screened from view from any other Lot except on trash collection day if curbside service is provided. Trash containers shall be placed outside for curbside service no earlier than the evening before trash collection day and shall be retrieved no later than the evening of trash collection day. The Board may adopt Rules regulating the areas where containers may be stored and areas for curbside service.

4.7 Stormwater Management. This Development is required by the City to maintain certain stormwater treatment facilities ("Stormwater Facilities") within the Development, including without limitation pipes, channels, vegetated swales, infiltration basins, inlets and catch basins. The Association shall maintain the Stormwater Facilities in the Development in perpetuity, including without limitation structural and/or treatment control, in strict accordance with the inspection and maintenance requirements set forth in the Stormwater O&M Manual described in **Section 1.36** and the Stormwater Control Plan described in **Section 1.35**.

Neither the Association nor any Owner may alter, modify, remove, or replace any portion of the Stormwater Facilities located on a Lot without receiving prior written approval from the Architectural Committee and the City. All components of the Stormwater Facilities shall be cleaned at least ___ times a year, including immediately prior to October ___ and _____. A qualified inspector shall inspect the Stormwater Facilities at least annually before the wet season between August 1 and October 1 of each year. Inspection and Maintenance Checklists and Annual Reports shall be submitted in compliance with the requirements of the Stormwater Control Plan described in **Section 1.35**. "No Dumping, Flows to Bay" or similar curb markers shall be installed and maintained on all inlets.

Effective on the date the Association commences its operations as described in **Section 5.1** of this Declaration, the Association shall assume this Development's maintenance obligations under the Stormwater

Control Plan and Stormwater O&M Manual and shall include its costs to comply therewith in the assessment levied against the Lots in the Development.

This **Section 4.7** is a brief summary only of the Stormwater Control Plan and Stormwater O&M Manual. In the event of any conflict between the Stormwater Control Plan and Stormwater O&M Manual, on the one hand, and this **Section 4.7** on the other hand, the Stormwater Control Plan and Stormwater O&M Manual shall control.

Representatives and agents of the City, the local vector control departments and/or the Regional Water Quality Control Board may enter any and all portions of the Development (including each Lot) for the purpose of verifying the proper operation and maintenance of the Stormwater Facilities in accordance with the Stormwater Control Plan and the Stormwater O&M Manual.

4.8 Cooperation and Access. Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance obligations described in **Section 4.3** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance.

4.9 Reimbursement and Indemnification. If the Association incurs any maintenance costs because of the willful or negligent act or omission of any Owner or Occupant or their Permittees, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 6.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of twelve percent (12%) per annum, but not in excess of the maximum rate authorized by Applicable Laws. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 5.6.4**. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount and any costs in excess of such insurance coverage shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Association. The Owner shall pay the amount of any deductible and any amount in excess of insurance coverage.

ARTICLE 5 The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence as described in **Section 6.7**. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 4340 through 4370 regarding the elections to the Board and related matters that satisfy the requirements set forth in Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Lot. Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall irreversibly convert to Class A membership on the first to occur of the following:

- (i) the total outstanding votes held by the Class A Members equal the total outstanding votes held by the Class B Member; or
- (ii) the second anniversary of the first conveyance of a Lot in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Lot.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (a) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (b) approved by a majority of the written ballots cast in compliance with the requirements of Article 4 (commencing with Civil Code section 5100) of Chapter 6 of the Davis-Stirling Act and if not applicable, Corporations Code section 7513 or any successor statute thereto; or (c) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and Declarant owns any Lots, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 5.11 and 5.15** of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The adoption, amendment or repeal of Rules shall satisfy the applicable requirements of Civil Code sections 4350, 4360 and 4365. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or Occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner, Occupant, Permittee or a Rule that does not directly affect all Owners or Occupants in the same manner as long as the Rule applies to all Owners or Occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.13(v)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by Applicable Laws and subject to the due process requirements imposed by this Declaration, the Bylaws or by Applicable Law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; (c) commence any legal or equitable action for damages, injunctive relief or both; and (d) suspend use privileges for any Common Area facilities within the Development subject to the restrictions in **Section 5.12(i)**. Subject to the provisions of **Section 13.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or

settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a Member or Member's Permittee or the Member's Occupant or their Permittee, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least fifteen (15) days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten (10) days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) Assessment Charges: The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners. Fees not paid in a timely manner may be collected through a reimbursement assessment levied against the Owner's Lot.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures that comply with the requirements of Civil Code sections 5900 through 5920 for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910).

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area, exercise the

rights and perform the duties under the Storm Water Control Plan described in **Section 1.35**, perform the maintenance as described in **Section 4.3**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.5**, prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**, enforce bonded obligations as described in **Section 5.11**, levy and collect assessments as described in **Article 6**, prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

Notwithstanding anything herein to the contrary, the Association shall not assume any duty to maintain or insure any residential structures on any Lot until the structure has been completed and a certificate of occupancy permit has been issued by the local governmental entity.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

5.9 Utility Service to the Common Area. The Association shall acquire, provide and pay for water, trash collection, electrical, sewer and other necessary utility services for the Common Area, any Recreational Facilities, and any utility service provided to the Lots but charged to the Association.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The annual budget report required under **Section 5.10.1** and the annual policy statement required under **Section 5.10.4** shall be delivered to each Member by individual delivery pursuant to Civil Code section 4040. The Association shall deliver either the full report or a summary. If the Member has requested to receive all reports in full, the Association shall deliver the full reports to that Member. If a summary is delivered, the summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary.

5.10.1 Annual Budget Report. An annual budget report for each fiscal year shall be distributed not less than thirty (30) days nor more than ninety (90) days before the beginning of the Association's fiscal year containing the following information:

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

(ii) A summary of the Association's reserves prepared in accordance with the requirements in Civil Code section 5565.

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

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

(v) A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 5560, has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component or to provide

adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(vi) A statement as to the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(vii) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the major components. The statement shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 5570(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

(viii) A statement as to whether the Association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(ix) A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies. The summary shall include: (i) the name of the insurer; (ii) the type of insurance; (iii) the policy limits of the insurance; and (iv) the amount of deductibles, if any. To the extent that the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary shall contain, in at least 10-point boldface type, the following statement:

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

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have lapsed, been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

5.10.2 Assessment and Reserve Funding Disclosure Summary. The Assessment and Reserve Funding Disclosure Summary form prepared under Civil Code section 5570 shall be distributed with each annual budget report or summary.

5.10.3 Financial Statement Review. A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within one hundred twenty (120) days after the close of each fiscal year by individual delivery pursuant to Civil Code section 4040.

5.10.4 Annual Policy Statement. The Board shall distribute an annual policy statement that provides the Member with information about Association policies, which shall include the following information:

(i) The name and address of the person designated to receive official notices sent to the Association, pursuant to Civil Code section 4035.

(ii) A statement explaining that a Member may submit a request to have notices sent to up to two different specified addresses, pursuant to Civil Code section 4040(b).

(iii) The location, if any, designated for posting of a general notice, pursuant to Civil Code section 4045(a)(3).

(iv) Notice of a Member's option to receive general notices by individual delivery, pursuant to Civil Code section 4045(b).

(v) Notice of a Member's right to receive copies of meeting minutes, pursuant to Civil Code section 4950(b).

(vi) The statement of assessment collection policies required by Civil Code section 5730.

(vii) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.

(viii) A statement describing the Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents pursuant to Civil Code section 5850.

(ix) A summary of dispute resolution procedures, pursuant to Civil Code sections 5920 and 5965. The summary required by Civil Code section 5965 shall include the following language:

"Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the Member's right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law."

(x) A summary of any requirements for Association approval of a physical change to property, pursuant to Civil Code section 4765.

(xi) The mailing address for overnight payment of assessments, pursuant to Civil Code section 5655.

(xii) The annual policy statement shall include the notice required by Civil Code section 5730(a) in at least 12-point type.

(xiii) Any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

5.10.5 Transfer Documents. Copies of the transfer documents described in Civil Code section 4525 shall be provided to any Owner or any other recipient requested by Owner within ten (10) days of the mailing or delivery of a written request. The transfer documents shall be provided and reasonable fees charged in accordance with the procedures, requirements and restrictions set forth in Civil Code section 4530.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to

complete the Common Area Improvements not completed at the time the California Bureau of Real Estate issued a final subdivision report, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) thirty (30) days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described in the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or Occupant physical access to his or her Lot, either by restricting access through the Common Areas to the Owner's Lot or by restricting access solely to the Owner's Lot;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under Applicable Laws when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Lot; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Lots is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

5.13 Additional Limitations on Authority of the Board. The Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than fifty percent (50%) of the voting power of the Association residing in Members other than the Declarant:

(i) incur aggregate expenditures for capital Improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(ii) sell 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;

(iii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(iv) enter into a contract with a third Person to furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three (3) years' duration, provided the policy permits for short rate cancellation by the insured;

(d) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five (5) years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(e) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party; or

(v) borrow money secured by any Association assets as authorized under **Section 5.6.3.**

5.14 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than thirty (30) days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than thirty (30) days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.15 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association

for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval by Class A Members holding at least two-thirds of the total Class A Member votes, excluding any Class A votes held by Declarant. Any Non-Declarant Director may call a special meeting of the Members for this purpose. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.14, 6.6 and Article 12**. The provisions of this **Section 5.15** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.16 Access to Association Records. The Association shall provide Members with access to the Association records in accordance with the procedures and requirements in Article 5 (commencing with Civil Code section 5200) of Chapter 6 of the Davis-Stirling Act.

ARTICLE 6 Assessments

6.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by Applicable Laws. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area Improvements, in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Lot unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in **Section 10.3**.

Declarant's obligation to pay regular assessments for Lots owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Association and reviewed by the California Bureau of Real Estate.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment may include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at any time during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the major components as described in **Section 5.10.1** that the Association is obligated to maintain. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (a) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (b) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the maintenance of, or litigation involving the maintenance of, major components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board 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 in accordance with the requirements of Civil Code section 5515.

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall provide a general notice pursuant to Civil Code section 4045 of that decision and of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Lot regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three (3) years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the Association is obligated to restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

- (i) identification of the major components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (ii) identification of the probable remaining useful life of the major components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the major components identified in subparagraph (i) during and at the end of its useful life;
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the major components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and
- (v) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all major components with an expected remaining life of thirty (30) years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Article 2 (commencing with Civil Code section 4900) of Chapter 6 of the Davis-Stirling Act. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 5605.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 4177 or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or Occupant of any Lot or their Permittees or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within thirty (30) days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10**, subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area or other property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or Occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be

levied against any Lot until notice and hearing have been provided the Owner as described in **Section 5.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than thirty (30) days nor more than sixty (60) days prior to the due date of the increased assessment.

The Board may not (a) impose an annual regular assessment for any fiscal year more than twenty percent (20%) above the annual regular assessment for the Association's preceding fiscal year or (b) impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of a quorum of Members, pursuant to Civil Code section 4070, at a meeting or election. For purposes of this **Section 6.6**, a "quorum" means more than fifty percent (50%) of the Owners. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (i) an extraordinary expense required by an order of court;
- (ii) an extraordinary expense necessary to maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety within the Development is discovered; and/or
- (iii) an extraordinary expense necessary to maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the annual budget report required under Civil Code section 5300, provided that before the imposition or collection of any assessment under this subdivision the Board must 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 and shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the annual budget report containing items (i), (ii), (iv), (v), (vi), (vii) and (viii) required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, unless the Board has obtained the approval of a majority of a quorum of Members, pursuant to Civil Code section 4070, at a Member meeting or election. For the foregoing purposes, a quorum means more than fifty percent (50%) of the Owners of the Association.

6.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Bureau of Real Estate or an earlier date at the discretion of the Declarant. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

6.8 Due Dates of Assessments. Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in twelve (12) equal monthly installments and each installment shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten (10) days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by Applicable Laws

6.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated in equal amounts among the Residential Lots.

Notwithstanding anything herein to the contrary, if the use of any Lot, the equipment or facilities maintained within any Lot, or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

6.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one or more of the following remedies in the event of a delinquent assessment:

6.10.1 Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2.**

6.10.2 Assessment Lien. Except as otherwise provided in **Section 6.5**, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(i) At least thirty (30) days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(a) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

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

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

(d) The right to request a meeting with the Board as provided by **Section 6.10.2(v).**

(e) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

(f) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act before

the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(ii) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(iii) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act or alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(iv) The decision to record a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

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

(vi) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the county recorder of the county in which the Lot is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 5650(b), a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(i)(b)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in Civil Code sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the

county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's Occupants or Permittees were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(vii) A lien created pursuant to **Section 6.10.2(vi)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(viii) Subject to the limitations of this **Section 6.10**, after the expiration of thirty (30) days following the recording of a lien created pursuant to **Section 6.10.2(vi)**, the lien may be enforced in accordance with the procedures and requirements set forth in Article 3 (commencing with Civil Code section 5700) of Chapter 8 of the Davis-Stirling Act, including the applicable restrictions against judicial or nonjudicial foreclosure actions for delinquent regular or special assessments in an amount less than \$1,800 described in Civil Code section 5720(b).

(ix) Within twenty-one (21) days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(x) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(xi) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

(xii) If it is determined that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice required under **Section 6.10.2(i)** and pay all costs related to the dispute resolution or alternative dispute resolution.

6.10.3 Small Claims Court Resolution. If a dispute exists between an Owner and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner, in addition to pursuing dispute resolution under Article 3 of Chapter 10 of the Davis-Stirling Act commencing with Civil Code section 5925, may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to Civil Code section 5650(b), and commence an action in small claims court for resolution of the dispute. Nothing in this **Section 6.10.3** shall impede the Association's ability to collect delinquent assessments as provided in **Section 6.10.2**.

The provisions of this Section 6.10 are intended to comply with the requirements of the Davis-Stirling Act. If these sections are amended, restated or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended, restated or rescinded in the same manner. The

Board is advised to confirm the current statutory requirements prior to commencing any delinquent assessment enforcement action.

6.11 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.12 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 5135, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by Applicable Laws.

ARTICLE 7
Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. If formed, the Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until ninety percent (90%) of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Committee until ninety percent (90%) of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in **Article 3**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines and Design Guidelines and Standards described in **Section 7.2**

7.2 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, roof, windows, exterior doors, exterior stairs, fence, sign, garage, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot or Common Area;

(ii) any planting or landscaping (including the removal of any tree);

(iii) any grading, excavation or site preparation;

(iv) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles); or

(v) any installation, addition, repair, replacement, alterations, or removal of Solar Collectors described in **Section 1.32**.

If the Committee has established landscaping guidelines, the installation or replacement of all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee. In addition, the City approved certain Design Guidelines and Standards for this Development described in **Section 1.12**, which are attached hereto as **Exhibit C**, that guide future renovation, additions or modifications for the residences.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing and insurance requirements (including workers compensation and liability insurance); (ii) completion and labor and material bonds or other acceptable collateral; and (iii) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Notwithstanding anything herein to the contrary, any Owner may repaint the exteriors of any Improvements on the Owner's Lot in the same colors, remove and replace any siding or roofing materials with the same material and in the same color, and remove and replace vegetation of the same type as originally constructed or installed by Declarant or as previously approved by the Committee. In addition, any Owner may repaint the interior of the Owner's residence in any color the Owner desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building or, in the case of any residences that immediately abut an adjoining residence, result in the increase of the sound or impact transmissions from the residence to the adjoining residence.

7.3 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". In the event of inconsistency between the Architectural Rules and the Design Guidelines and Standards, the more restrictive rule shall apply. Pending adoption of the Architectural Rules, the provisions of this **Section 7.3** shall control the actions of the Committee and shall bind all Owners. The Architectural Rules shall interpret and implement the provisions of this **Article 7**, and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

7.3.1 Application Requirements. The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer that adequately describe the proposed work and shall include the following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall

reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a “complete application” for purposes of **Section 7.4** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven (7) calendar days after the initial application has been received by the Committee. If the Committee fails to respond within thirty (30) days of receipt of the request, the application shall be considered complete for purposes of **Section 7.4** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 7.4**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 7** shall be considered received by the Committee in accordance with the “receipt” procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Association’s manager, the President of the Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Association or Chair of the Committee and mailed to the principal office of the Association.

7.3.2 Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

7.3.3 Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any use restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 7.4**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any use restrictions contained in this Declaration or violation of the Design Guidelines and Standards.

7.3.4 Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee’s hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant’s architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

7.3.5 Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 7.4**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of ninety (90) days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with completion of plans and specifications for the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 7.3**.

7.4 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

- (i) the applicant has complied with the application procedures described in **Section 7.3** and any additional procedures adopted by the Committee;
- (ii) the proposed work is in compliance with the use restrictions contained in this Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under **Section 7.3.3** in effect at the time the application was submitted to the Committee;
- (iii) the proposed work is in compliance with all Applicable Laws (the Committee shall have no duty to independently confirm such compliance);
- (iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development with the overall general plan and scheme of the Development, and with the Design Guidelines and Standards; and
- (v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 7.4**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 4765, the applicable requirements of Civil Code sections 714 and 714.1 regarding Solar Collectors, the restrictions contained in **Article 3** and with all Applicable Laws regulating the rights of disabled persons. If there is any conflict between this **Article 7** and Civil Code section 4765, Civil Code section 4765 shall control to the extent of the conflict.

7.5 Architectural Committee's Decision. The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

If the Committee fails to approve or disapprove any application or fails to request additional information within sixty (60) days of receipt of either the complete application or any advance fees required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the complete application and/or advance fees and to establish the date of receipt.

7.6 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within ninety (90) days after receipt of approval or completed within one hundred eighty (180) days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.7 Non-liability. The Association, the Committee, the Declarant, and the other Lot Owners, and their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or Occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy Applicable Laws or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.8 Enforcement. If any Owner or Occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines and penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.9 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.

7.10 Governmental Approval. Before commencement of any addition of any Improvement or any alteration to any Improvement approved by the Committee, the Owner shall comply with all Applicable Laws. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.11 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by Applicable Laws or pursuant to an agreement with any Lot Owner or the Association.

ARTICLE 8 Insurance

8.1 Owner's Insurance Policy(ies). Each Owner is advised to obtain and maintain, at the Owner's expense, a property insurance policy that provides, at minimum, coverage against losses caused by fire and all other hazards normally covered under a "special form" policy or its equivalent in an amount no less than ninety percent (90%) of the replacement cost of the insurable Improvements on the Lot. The policy shall contain the following endorsements or their equivalents: agreed amount, inflation guard, Applicable Laws, and replacement cost. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance policies of the types required herein. Nothing herein imposes any duty or obligation on the Association or any director, officer or agent thereof to confirm that Owners are carrying the insurance required under this **Section 8.1**.

No Owner shall separately insure any property covered by the Association's property insurance policy as described in **Section 8.3** below. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner's Lot to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of personal liability and personal property insurance coverage the Owner should maintain, and (ii) the availability of loss assessment insurance coverage.

8.2 Association Liability Insurance. The Association shall obtain and maintain the following liability policies:

8.2.1 General Liability Policy: A general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners against bodily injury or property damage from an accident or occurrence within the Common Area. The Association shall be the first named insured under the policy. Subject to the terms and conditions of the policy, the policy also shall cover bodily injury or property damage from an accident or occurrence within any Lot related to any act or omission of an agent of the Association in the performance of the Association's duties under this Declaration. The policy shall include, if obtainable, cross liability or severability of interest coverage. The limits of such insurance (including the commercial general liability and any excess liability coverage) shall not be less than \$1,000,000 covering all claims for bodily injury and property damage arising out of a single occurrence. The coverage may be a combination of primary and excess policies. The insurance shall contain coverage terms equivalent to or better than the terms provided by Insurance Services Offices ("ISO") form CG001 or any successor form thereto. Such insurance shall include coverage against liability for owned, non-owned and hired automobiles and other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy shall be primary and noncontributing with any other liability policy covering the same liability. Any notice of cancellation or material changes to the policy shall be provided by the issuing insurance company in accordance with the notice requirements in the policy. If cancelled the Board shall replace the policy with a substantially equivalent policy.

8.2.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a

residential association and in sufficient amounts to satisfy the insurance requirements of Civil Code section 5800 or any successor statute thereto.

8.2.3 Fidelity Insurance. Fidelity insurance coverage, naming the Association as insured, for any handling funds of the Association, including Association officers, directors, employees, volunteers, and agents, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association during the term of the insurance. However, the aggregate amount of the fidelity insurance coverage may not be less than the sum equal to three (3) months of annual assessments on all Lots in the Development, plus reserve funds. The insurance policies or bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association.

8.3 Association Property Insurance. The Association, in the sole discretion of the Board, may obtain and maintain a property insurance policy on the Common Area Improvements and Association personal property in such amounts and containing such terms and conditions as the Board from time to time may select.

8.4 Deductible. Except as otherwise provided by the Board in writing, when a claim is made on the Association's property insurance policy, an Owner is responsible for payment of damage up to the amount of the deductible in circumstances: (i) where damage is caused by the fault of the Owner or the Owner's Occupants or their Permittees; and/or (ii) where damage is caused primarily by the failure of an Improvement within the Lot that the Owner is responsible for maintaining. In cases where fault cannot be determined, the Association shall pay the deductible. Association may levy a reimbursement assessment against an Owner's Lot as authorized under **Section 6.5** for the Owner's share of the deductible.

8.5 Insurance Rating and Cancellation. The insurance company providing the Association's insurance under **Sections 8.2 and 8.3**, if applicable, shall have a A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes.

8.6 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code section 5800 or in any successor statute thereto. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.8**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

8.7 Periodic Insurance Review. The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the

property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

8.8 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.3**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.9 Other Insurance. In addition to the policies described in **Sections 8.2 and 8.3**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by Applicable Law;
- (ii) flood insurance on Common Area Improvements if the Development is located in an area designated by an appropriate governmental agency as a special flood hazard area and the Improvements are of the nature on which hazard insurance is normally maintained; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 9

Damage, Destruction or Condemnation

9.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement in substantially the same condition and appearance as existed immediately before the damage or destruction, subject to such modifications as may be approved by the Architectural Committee or as required by Applicable Laws. If any Improvement within the Common Area is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Improvement substantially in accordance with the original as-built plans and specifications subject to such modifications as may be required by Applicable Laws.

9.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing Applicable Laws and except as otherwise authorized under this **Article 9**, shall restore the Improvement subject to such changes as may be approved by the Architectural Committee or required by Applicable Laws. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 8.8**. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

9.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by Applicable Laws. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 9.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 9.5** below. If the Members do not approve such actions, then **Section 9.6** shall apply.

9.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 9.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 9.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 9.5**.

9.5 Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 9.3** and **Section 9.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose residences were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 9.6** shall apply.

9.6 No Reconstruction. If the damaged Improvement is not to be reconstructed as provided in **Sections 9.2 through 9.5** above, all available insurance proceeds and reserves allocated to the damaged Improvement shall be distributed to the Owners of the damaged Improvements subject to the rights of their Mortgagees, provided that the Board in its discretion may require that all or a portion of the funds be used to secure the damaged Improvement for safety reasons and/or screen the damaged Improvement for aesthetic purposes.

If the damaged Improvement is uninhabitable, from and after the date that the Board determines that the damaged Improvement shall not be restored, the Association's duty to maintain and insure the damaged Improvement shall terminate, and the Owner's duty to pay that portion of the monthly assessment allocated to the maintenance (including reserves) and insurance for the residences within the Development also shall terminate. If the damaged Improvement is subsequently restored or replaced so that a habitable residence is again located on the Lot, the Association maintenance insurance duties and the Owner's full assessment duties automatically shall be reinstated as of the date a habitable residence is located on the Lot.

9.7 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

9.8 Condemnation. If any action for condemnation of all or any portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of Members holding at least fifty-one percent (51%) of the total voting power of the Association and with the consent of the first mortgagees as may be required herein, the Common Area or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all the Owners under an irrevocable power of attorney, which each Owner by

accepting a deed to a Lot in the Development grants to the Board, and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. Proceeds of any such sale shall be allocated equally among the Lots and distributed to each Owner and their Mortgagees as their respective interests may appear. If the Common Area or any portion of it is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation; and if not so apportioned, then the award shall be allocated equally among the Lots and distributed equally to each Owner and their Mortgagees as their respective interests may appear.

9.9 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this **Article 9**, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the American Arbitration Association (AAA), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with AAA's commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

ARTICLE 10 Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under Applicable Laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Administration and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Lot or other portions of the Development.

10.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only assessments or

other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

ARTICLE 11 Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds fifty percent (50%) or more of the capital and profit interests if a partnership or limited liability company, fifty percent (50%) or more of the voting shares if a corporation, and fifty percent (50%) or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended as described in **Section 4.4** or amended or rescinded in any respect with the vote or written consent of the holders of not less than a majority of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than a majority of all votes and a majority of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee, Owner or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 4230. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

Notwithstanding anything herein to the contrary, the easements appurtenant to any Lot as described in **Sections 2.3 and 2.4** may not be modified or terminated without the prior written consent of the Owner of the Lot.

11.3 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, or any exhibits thereto, and the consent of neither the Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required. The amendment shall be effective when recorded in the records of Contra Costa County, California, signed by an authorized agent of Declarant.

11.4 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the right to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal

Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the Veterans Administration (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

11.5 City Amendment Rights. Notwithstanding anything herein to the contrary, the provisions of **Sections 1.12, 1.16, 1.17, 1.25, 1.35, 1.36, 2.2, 2.3.5, 3.4, 3.18, 4.3, 4.5, 4.7, 5.1, 7.2, and this Section 11.5** or any modification of this Declaration pertaining to or specifying the City may not be rescinded or amended without the prior written consent of the Planning Department of the City and the City Attorney, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 12 Declarant Disputes

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a “builder” within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the “Declarant” for purposes of this **Article 12**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, operation or sale of any Improvements or landscaping located within the Development, including (a) claims for actual and/or economic damages; (b) fraud claims; (c) personal injury claims; (d) breach of contract claims; and (e) violation of statute claims made under Civil Code sections 896 and 897 (individually and collectively the “Claim”), shall be subject to the claims procedure set forth in **Exhibit E** attached hereto and incorporated herein.

The claims procedure in **Exhibit E** do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

ARTICLE 13 Miscellaneous Provisions

13.1 Headings. With the exception of **Article 1**, the headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of 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 Government Code section 12955(p), or ancestry.

13.5 Notification of Sale. No later than five (5) days after the closing of the sale of any Lot, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

13.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or Occupant desires the Association to take any enforcement action, the Owner or Occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within ninety (90) days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the applicable requirements of Article 3 (commencing with Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act.

13.9 Term. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten (10)-year periods unless this Declaration is rescinded by the written consent of Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials within the Development;

- (ii) use such portions within the Development as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements within the Development;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Development to inspect any Common Area or any model homes.

13.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned and delegated hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.12 Attorneys' Fees. Except as provided in **Article 12**, in the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or duties under the Governing Documents of the Association or any Member, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

13.14 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

13.15 Statutory Reference. Any reference to a governmental statute in this Declaration includes any amendments to the statute. If the statute is replaced by an equivalent statute, the equivalent statute shall be the applicable statute.

THIS DECLARATION is executed this _____ day of _____, 201__.

[DRAFT ONLY - NOT FOR RECORDING PURPOSES]

O'BRIEN LAND COMPANY, LLC,
a California limited liability company

By: _____

Its _____

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A – Air Filtration System Form

EXHIBIT B – Specific Maintenance Obligations

Note: This Exhibit is not intended to be an all-inclusive list of the items maintained either by the Owner or the Association. Its purpose is to describe maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party. Unless otherwise limited, maintenance means inspection, cleaning, maintenance, repair, upgrading and/or replacement.

Exterior Building Components	Owner	Association
Roof	✓	
Solar Panels and Solar Equipment	✓	
Rain Gutters & Downspouts	✓	
Siding	✓	
Cleaning Windows Accessible from Patios or Decks	✓	
Cleaning All Other Windows	✓	
Window Repair and Replacement	✓	
Window Frames	✓	
Garage Door Repair and Replacement	✓	
Garage Door Hardware	✓	
Garage Door Exterior Surface Paint	✓	
Exterior Door Repair and Replacement	✓	
Exterior Door Hardware and Weatherstripping	✓	
Exterior Door Exterior Surface Paint	✓	
HVAC System and Pad	✓	
Clustered Mailbox Structure		✓
Mailbox Key Lock and Door	✓	
Exterior Light Fixtures on Unit's Meter	✓	
Exterior Light Fixtures on Association's Meter		✓
Lateral Utility Lines **	✓	
Porch and Courtyard Cleaning	✓	
Porch Structural Components	✓	
Foundation	✓	
Fences and Walls	✓	
Landscaping within Courtyards and Fenced Yard Areas	✓	
Landscaping within Unfenced Front Yard Areas		✓

** If the lateral line exclusively serves the Unit even if part of a larger interconnected utility system, the Association shall maintain the line and the Unit Owner shall reimburse the Association for the maintenance costs.

Interior Unit Components	Owner	Association
Interior Doors and Hardware (locks, hinges)	✓	
Door Bells	✓	
Garage Door Opening Equipment	✓	
Interior Walls and Wallboard	✓	
Wall Coverings (e.g. wallpaper and paint)	✓	
Floor Coverings (e.g. tile, carpets, carpet pads, and hardwood floors)	✓	
Ceiling Coverings	✓	
Paint	✓	
Light Fixtures and Light Bulbs	✓	
Cabinets	✓	
Appliances (e.g. refrigerators, stoves, ovens, dishwashers, garbage disposals, trash compactors)	✓	
Electrical System (e.g. light fixtures, light switches, light bulbs, bathroom fan fixtures, and wiring)	✓	
Plumbing System (where repairs are accessible from inside the Unit)	✓	
Smoke Detector and/or Carbon Monoxide Detector (except as noted)	✓	
Smoke Detector and Carbon Monoxide Detector Battery Replacement	✓	
Window Coverings	✓	

EXHIBIT C – Design Guidelines and Standards

These Design Guidelines and Standards seek to help maintain the quality of Lafayette’s single-family residential neighborhoods by providing guidance for exterior repairs, remodeling, and additions at The Homes at Deer Hill. The Design Guidelines provide individual property owners with the requirements to repair, remodel, or rebuild the existing home.

The following sections provide standards and guidelines that ensure the quality of homes in the neighborhood is maintained and only allows for a change in the appearance of the house with the approval of the Deer Hill Owners Association (“Association”).

Architectural Design Guidelines:

Each home design went through a complete design review with the Lafayette Design Review Commission, Planning Commission, and City Council and was considered and reviewed in the Environmental Impact Report and Supplemental Environmental Impact Report for the Homes at Deer Hill. To maintain the quality and expectations that were approved by the City, alterations to the exterior of the homes, including additions to first or second floor, are not allowed unless approved by the Association and comply with any building permit regulations of the City of Lafayette. Owners are not required to obtain approval to perform general maintenance, repairs, or replacements provided that the colors and materials are the same as the original construction.

Color, Materials and Finishes:

Original exterior wall materials must be matched as closely as reasonably possible when repairing, remodeling, or rebuilding. Each exterior color scheme and material specification has gone through extensive review to ensure high-quality design and overall harmony within the neighborhood. The Owner is allowed to replace the material and to repaint/stain to match the original, approved color scheme. Additional repainting or refinishing of the exterior surface of any building is not authorized, unless approved by the Association. Any replacement windows and doors shall match the size, shape, and style of the existing windows and doors and shall be compatible with the other windows and doors of the home.

Solar Panels:

Each home has been constructed with a solar panel array. It is understood that standards will change over time, and the Owner has the right to upgrade their solar array and install additional energy producing/saving features, as approved by the Association and within the regulations of the City of Lafayette.

EXHIBIT D – Landscape Maintenance and Pruning Guidelines

EXHIBIT E – Claims Procedure