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2012-0058776 11/28/2012 09:24:47 AM
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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
CANON DEL SOL HOMEOWNERS ASSOCIATION**

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

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

CANON DEL SOL HOMEOWNERS ASSOCIATION

RECITALS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") amends and restates in their entirety the previous Declaration and amendments thereto with respect to this Development.

A. The real property (the "Property") that is the subject of this Declaration consists of Lots 1 through 97, inclusive and Parcel A as shown on the subdivision map (the "Map") entitled "Canon Del Sol, Tract No. 630," recorded on June 24, 1980, in Book 69 of Maps at Page 20, Records of Santa Cruz County.

B. The original Declaration was recorded on February 17, 1981 in Volume 3296, Page 97 of the Official Records of Santa Cruz County ("Official Records"). The Declaration was amended by the First Amendment to Canon Del Sol Declaration of Covenants, Conditions and Restrictions recorded on September 30, 1982 in Book 3488, Page 197 of the Official Records and by the Second Amendment to Canon Del Sol Declaration of Covenants, Conditions and Restrictions recorded on July 19, 1983 in Book 3597, Page 720 of the Official Records. This Declaration amends and restates the previous Declarations, and shall supersede all previous Declarations.

C. The Property is developed as a Planned Development under the Davis-Stirling Common Interest Development Act. The original developer established a general plan, set forth in this Declaration, for the subdivision, improvement and development of the Property, and each and every lot and parcel on the Property, intended to secure the harmonious and uniform development of the Property in accordance with the plan. The Property is subject to mutually beneficial restrictions.

NOW, THEREFORE, the Association hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the declarations, limitations, covenants, conditions, restrictions, and easements contained in this Declaration, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in

accordance with the plan for the improvements of the Project and its division into Lots. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants that run with the land and are binding upon all Owners and their successors and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Project or the Property in the Project.

ARTICLE I.

DEFINITIONS

1.1. **Articles.** "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.2. **Assessment.** "Assessment" means that portion of the cost of maintaining, improving, repairing, operating, and managing the Project that is to be paid by each Owner as determined by the Association, and includes regular and special assessments.

1.3. **Association.** "Association" means the CANON DEL SOL HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

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

1.5. **Bylaws.** "Bylaws" means the bylaws of the Association, as amended from time to time.

1.6. **Common Area.** "Common Area" shall mean and refer to Parcel "A" as designated on the Map, and any other area that is either owned by the Association or to which the Owners have mutual and reciprocal easement rights appurtenant to their Lots.

1.7. **Common Expenses.** "Common Expenses" means the actual and estimated expenses of maintaining, repairing, operating and replacing the Common Area and all landscaping, utilities and improvements within the Common Area, and a reasonable reserve for such purposes, and all sums designated common expenses by or pursuant to this Declaration, the Articles or the Bylaws.

1.8. **County.** "County" means the County of Santa Cruz, California, the County in which the Project is located.

1.9. **Days.** "Days" means calendar days unless otherwise specified.

1.10 **Declaration.** "Declaration" means this Declaration, as amended or supplemented from time to time.

1.11. **Director.** "Director" means a member of the Board of Directors of the Association.

1.12. **Eligible Holder Mortgages.** "Eligible Holder Mortgages" means mortgages held by "Eligible Mortgage Holders."

1.13. **Eligible Insurer or Guarantor.** "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with this Declaration.

1.14. **Eligible Mortgage Holder.** "Eligible Mortgage Holder" means a First Lender who has requested notice of certain matters from the Association in accordance with this Declaration.

1.15. **First Lender.** "First Lender" means any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded First Mortgage on any Lot.

1.16. **First Mortgage.** "First Mortgage" means any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages on that Lot.

1.17. **Foreclosure.** "Foreclosure" means the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

1.18. **Governing Documents.** "Governing Documents" means this Declaration, the Articles, the Bylaws, and any rules and regulations adopted pursuant to this Declaration.

1.19. **Lot.** "Lot" means any plot of land shown on the Map as Lots 1 through 97, inclusive, together with all improvements thereon.

1.20. **Map.** "Map" means that Subdivision Map entitled "Canon Del Sol, Tract No. 630," recorded on June 24, 1980, in Book 69 of Maps at Page 20, Records of Santa Cruz Amended & Restated CC&Rs

County.

1.21. **Member.** "Member" means a person entitled to membership in the Association as provided in this Declaration.

1.22. **Mortgage.** "Mortgage" includes a deed of trust as well as a mortgage.

1.23. **Mortgagee.** "Mortgagee" includes a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.24. **Mortgagor.** "Mortgagor" includes the trustor of a deed of trust as well as a mortgagor.

1.25. **Owner.** "Owner" means the record holder of title to a Lot. This includes any person having fee simple title to any Lot, but excludes persons or entities having any interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract of sale is recorded, the purchaser, rather than the fee owner, shall be considered the Owner from the date the Association receives written notice of the recorded contract.

1.26. **Party Wall.** "Party Wall" means any wall that was built as a part of the original construction of the Residences and placed on the dividing line between two Lots.

1.27. **Person.** "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.28. **Project.** "Project" means all of the real property subject to this Declaration as described on the Map, and all improvements on that real property.

1.29. **Residence.** "Residence" means a dwelling situated on a Lot, including any attached structures also situated on a Lot.

1.30. **Rules.** "Rules" means the rules and regulations adopted from time to time by the Board, including architectural guidelines, restrictions and procedures.

ARTICLE II.

DESCRIPTION OF PROJECT AND CREATION OF PROPERTY RIGHTS

2.1. **Description of Project.** The Project is a residential subdivision, consisting of the Lots and the Common Area, and the improvements constructed thereon.

2.2. Easements; Rights of Entry and Use. Each Lot shall have appurtenant to it the right of easements over the Common Area for ingress and egress, and for use, occupancy and enjoyment, and for the construction, maintenance and operation of utilities, subject to the provisions of this Section. Each Lot shall be subject to:

A. The right of the Association's agents or employees to enter any Lot to cure any violation of the Governing Documents, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within 30 days after the finding of a violation by the Association.

B. The access rights of the Association to perform its maintenance obligations as described in this Declaration.

C. The rights of the Owners and the Association to install, maintain, repair, or replace utilities as described in this Declaration.

D. The encroachment easements described in this Declaration.

E. The rights of Owners to make improvements or alterations to their Lots, subject to the provisions of this Declaration.

F. The right of the association to discipline Members and suspend the voting rights for any period during which any assessment against the Member's Lot remains unpaid, and for any infraction of the Governing Documents, subject to the Member's right to notice and an opportunity to be heard, as provided in the Bylaws.

G. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefore, the rights of such mortgagee shall be subordinate to the rights of the Members of the Association.

H. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, including but not limited to, access, utilities, and parking, which are beneficial to the development of the Project in accordance with the general plan established by this Declaration.

I. The right of the Association to install and connect a cable or central television system to each dwelling on each Lot. Said system, if and when installed, shall be maintained by the Association or cable television provider. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of connecting the same with the master cable television terminal or line. Each Lot shall be subject to an easement in favor of all other Lots and in favor of the cable television provider, to provide for the passage through the Lot and any structure thereon of television connections from any other Lot to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

J. A drainage easement in favor of the Association over each Lot for the maintenance of an in-tract storm drainage system. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots are hereby created for the flow of surface water.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

2.3. Partition Prohibited. No Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Lot owned by two or more persons and division of the sale proceeds is not prohibited by this paragraph but partition in kind of a single Lot is prohibited.

2.4. Annexation of Additional Property. Additional property may be annexed and become subject to this Declaration upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds majority of the voting power of its Members, and the approval of Eligible Mortgage Holders as may be required by this Declaration. Upon approval, the Owner of the annexed property shall file of record a Declaration of Annexation. Upon the recording of that Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association, and shall be subject to all provisions of this Declaration.

2.5 All Easements Part of Common Plan. Whenever any easements are reserved or created or are to be reserved or created in this Declaration, those easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds

subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all Owners within the Project.

2.6. Utilization of Sewage Treatment Facility. The Project's sewage treatment facility will only be utilized to serve the Project and shall not be used for other developments. This restriction is a covenant running with the land, shall bind all Owners, present and future, and cannot be modified or deleted without the consent of the California Coastal Commission.

ARTICLE III.

ASSOCIATION, ADMINISTRATION, MEMBERSHIP, AND VOTING RIGHTS

3.1. Association to Manage Common Areas. The ownership and management of the Common Areas shall be vested in the Association in accordance with this Declaration, the Articles and the Bylaws.

3.2. Membership. The Owner of a Lot, upon becoming the Owner, shall automatically become a Member of the Association, and shall remain a Member of the Association until the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws.

3.3. Transferred Membership. Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of the Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Lot by Foreclosure or a deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

3.4. Membership and Voting Rights. Membership and voting rights shall be as set forth in the Bylaws.

ARTICLE IV.

MAINTENANCE AND ASSESSMENTS

4.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed, covenants and agrees:

A. To pay to the Association regular assessments or charges, and special assessments for purposes permitted in this Declaration, these assessments to be established and collected as provided in this Declaration; and

B. To allow the Association to enforce any assessment lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The regular and special assessments, together with interest, late charges, collection costs, and reasonable attorney fees, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment. Each assessment, together with interest, late charges, collection costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of the Lot when the assessment fell due. The Owner's personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Lot.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project, and to enable the Association to perform its obligations under this Declaration.

4.3. Assessments.

A. Regular Assessments. The Board shall establish and levy regular assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The regular assessment shall include a portion for reserves in those amounts as the Board in its discretion considers appropriate to meet the costs of future repair, replacement, or additions to the major improvements and fixtures that the

Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account, and the signatures of at least two persons, either two 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 moneys from the reserve account. The Board shall not expend reserve funds for any purpose other than:

- (1) The repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the reserve fund was established; or
- (2) Litigation involving the purposes set forth in subparagraph (1), above.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of moneys from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 1363.05, as the same may be amended from time to time. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing how the moneys will be repaid to the reserve fund. The Board must cause the transferred funds to be restored to the reserve account within one (1) year of the date of the initial transfer; however, the Board may, after giving the same notice required for considering a transfer, and, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account would be in the best interests of the Association, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in this subparagraph. Any such special assessments shall be subject to the limitations specified in this Article. The Board may extend the date the payment on the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016 (as the same may be amended from time to time), and of the availability of an accounting of those expenses. The Association shall

make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the office of the management company of the Association.

B. Special Assessments. The Board may at any time levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or other purposes as the Board in its discretion considers appropriate. Special assessments shall be allocated among the Lots in the same manner as regular assessments, provided that the Board may levy a special assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his or her Lot into compliance with the provisions of the Governing Documents.

4.4. Restrictions on Increases in Regular or Special Assessments. The Board may not impose on any Lot a regular assessment that is more than 20 percent greater than the regular assessment for the immediately preceding fiscal year or levy a special assessment to defray the cost of any action or undertaking on behalf of the Association that in the aggregate exceeds 5 percent of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this paragraph, a "quorum" means members constituting more than 50 percent of the voting power of the Association. Any meeting of the Association for purposes of complying with this paragraph shall be conducted in accordance with California Corporations Code section 7510 et seq. and California Corporations Code section 7613. The Board may increase regular assessments by up to 20 percent over the regular assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code section 1365, subdivision (a), which provisions are set forth in the Bylaws, or has obtained the approval of the increase by the Members in the manner set forth above in this paragraph.

Notwithstanding the foregoing, the Board, without membership approval, may increase regular assessments or levy special assessments necessary for an emergency situation. For purposes of this paragraph, an emergency situation is one of the following:

A. An extraordinary expense required by an order of a court;

B. An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible when a threat to personal safety on the Project is discovered; or

C. An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been

reasonably foreseen by the Board in preparing and distributing the pro forma operating budget; provided, however, that prior to the imposition or collection of the assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the assessment.

The Association shall provide to the Owners by first-class mail notice of any increase in the regular or special assessments of the Association not less than 30 nor more than 60 days prior to the increased assessment becoming due.

This paragraph incorporates the statutory requirements of California Civil Code section 1366. If that section of the California Civil Code is amended in any manner, this paragraph automatically shall be amended in the same manner without the necessity of amending this Declaration.

4.5. Notice and Quorum for Any Action Authorized under Section 4.4. Any action authorized under Section 4.4 of this Declaration that requires a vote of the membership shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members not less than 10 nor more than 90 days in advance of the meeting, specifying the place, day, and hour of the meeting, and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting, pursuant to the provisions of California Corporations Code section 7513.

4.6. Division of Assessments. Regular assessments shall be levied against the Lots on the basis of two components: (i) an equal amount levied against all Lots for items that the Board considers to equally affect all Lots; and (ii) an amount computed based on the interior square footage of the homes constructed on the Lots for items that the Board considers to affect the Lots proportionately based on home size. Special assessments shall be allocated as the Board, in its discretion, deems appropriate on the basis of one of the following 3 formulas: (a) uniform (for matters that, in the Board's discretion, will affect all Lots equally); (b) pro rata based on the interior square footage of the homes built on the Lots (for matters that, in the Board's discretion, will affect the Lots proportionately based on home size); and (c) individual amounts per Lot based upon bids for work that will vary per Lot. Notwithstanding the foregoing, assessments intended to reimburse the Association for the costs of damage for which the Member is responsible shall be allocated solely to the responsible Lot. Regular assessments shall be collected on a monthly basis unless the Board directs otherwise. Special assessments may be collected in one payment or periodically as the Board shall direct.

4.7. Establishing Assessments. Subject to the provisions of Section 4.3 of this

Declaration, the Board of Directors shall use its best efforts to fix the amount of the regular assessment against each Lot and send written notice of the assessment to every Owner at least 45 days in advance of each regular assessment period, provided that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Board. Regular assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the assessments on a specified Lot have been paid. The certificate shall be conclusive evidence of payment.

4.8. Effect of Nonpayment of Assessments. Any assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12 percent per annum commencing 30 days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

4.9. Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to Foreclosure of a First Mortgage shall extinguish the lien of any assessments on that Lot (including attorney fees, late charges, or interest) as to payments that became due prior to that sale or transfer (except for assessment liens as to which a notice of delinquent assessments has been recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Lots to which at least 67 percent of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding First Mortgages on Lots comprising 51 percent of the Lots subject to First Mortgages. No sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien of those assessments. The unpaid share of those assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners, including the acquirer and his or her successors or assigns, based on a special assessment to be allocated in the manner provided in Section 4.6.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid assessments against the Lot to be transferred, and the Lot shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any assessments that become due after the date of the transfer.

4.10. Priorities; Enforcement; Remedies.

A. Collection Procedures. If an Owner fails to pay an Assessment when due, the Association has the right to bring legal action against the Owner to enforce collection of the unpaid and past-due Assessment, or to impose a lien on the Unit owned by the Owner, or both, all in accordance with the provisions of California Civil Code section 1367 et seq. Suit to recover a money judgment for unpaid Assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the payment of the Assessment. At least 30 days before placing a lien upon a Lot, the Association must notify the Owner in writing by certified mail of:

(1) 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 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."

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

(3) 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.

(4) The right to request a meeting with the Board, as provided by California Civil Code section 1367.1(c)(3).

(5) 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.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code section 1369.510 et seq. 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.

Any payments made by the Owner toward the debt 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 costs of collection, attorney's 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.

B. Alternative Dispute Resolution. 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. 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 or alternative dispute resolution with a neutral third party pursuant to Civil Code section 1369.510 et seq. 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.

C. Decision to Record Lien or to Proceed with Foreclosure. The decision to record a lien for delinquent assessments and/or to initiate foreclosure of 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 to record a lien for delinquent assessments by a majority vote of the Board in an open meeting; the Board shall record the vote in the minutes of that meeting. The Board shall approve the decision to initiate foreclosure of a lien for delinquent assessments by a majority vote of the Board in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner of the Lot by identifying the matter in the minutes by the parcel number of the Lot, rather than the name of the Owner. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale. The Board shall provide notice to an Owner of a Lot who occupies the Lot or to the Owner's legal representative in accordance with the manner of service of summons in Article 3 of Chapter 4 of Article 5 of Part 2 of the Code of Civil Procedure, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner of a Lot who does not occupy the Lot by first-class mail, postage prepaid, at the most current

address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

D. Payment Plans. An Owner may submit a written request to meet with the Board to discuss a payment plan for a delinquent debt. The Association shall provide the Owners the standards for payments plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede the 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.

E. Liens. The amount of the assessment, plus any costs of collection, late charges, and interest assessed, shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the County Recorder a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with California Civil Code section 1366, a legal description of the Owner's Lot, and the name of the record Owner of the Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure, 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 the President or Secretary of the Association. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the Lot in the Association's records, and the notice shall be mailed no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the County Recorder's Office, 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. A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas for which the Member of the Member's guests or tenants were responsible may become a

lien against the Member's Lot enforceable by the sale of the Lot under Civil Code sections 2924, 2924b, and 2924c.

Except as otherwise specified herein or by law, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Project Documents, except for the late payments, may not be characterized or treated as an assessment that may become a lien against the Member's Lot enforceable by sale of the Lot.

A lien created in accordance with the provisions hereof and in accordance with the law shall be prior and superior to all other liens recorded subsequent to the notice of assessment except (1) all taxes, bonds, assessments, and other levies that, by law, would be superior, and (2) the lien or charge of any First Mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value.

F. Enforcement of Lien. Thirty days after the recordation of the assessment lien, it may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of California Civil Code sections 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes, or in any other manner permitted by law. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments, or from accepting a deed in lieu of foreclosure.

If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the County Recorder's Office a lien release or notice of rescission and provide the Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in California Code of Civil Procedure sections 415.10 et seq. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by Civil Code section 1367.1 to the secondary address provided. An Owner's request shall be in writing and

shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

G. Association's Power to Acquire Lot. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at Foreclosure sale, and to acquire and hold, lease, mortgage, and convey the Lot. If the purchase of a Lot would result in a 5 percent or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a Lot is owned by the Association, following Foreclosure:

(1) No right to vote shall be exercised on behalf of the Lot;

(2) No Assessment shall be levied on the Lot; and

(3) Each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to the Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at Foreclosure sale following notice and publication, the Association may execute, acknowledge, and record a deed conveying title to the Lot, which deed shall be binding upon the Owners, successors, and all other parties.

H. Suspension of Voting Rights. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

I. Limitations on Enforcement Practices. Notwithstanding any contrary provision herein or in the Bylaws, the Association may not collect delinquent regular or special assessments of an amount less than \$1,800 (not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest) through judicial or nonjudicial foreclosure, but may attempt to collect or secure the debt as follows:

(1) Bringing a civil action in small claims court.

(2) Recording a lien on the Owner's Lot upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds \$1,800, or the assessments secured by the lien are more than 12 months delinquent. Before recording a lien under this provision, the Association must offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1368.810 et seq.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

J. Redemption Right. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period ends 90 days after the nonjudicial foreclosure sale.

4.11. **Unallocated Taxes**. In the event that any taxes are assessed against the Common Areas or the personal property of the Association, rather than against the Lots, those taxes shall be included in the assessments made under the provisions of this Declaration and, if necessary, a special assessment may be levied against the Lots in an amount equal to those taxes, to be paid in two installments, 30 days prior to the due date of each tax installment.

ARTICLE V.

DUTIES AND POWERS OF THE ASSOCIATION

5.1. **Duties**. In addition to the duties enumerated in the Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall have the following duties:

A. Maintenance. The Association shall maintain, repair, replace (when necessary), restore, operate, and manage all of the Common Area and all facilities, improvements, furnishings, equipment, and landscaping on the Common Area, all property that may be acquired by the Association, and all property that the Association is otherwise required to maintain pursuant to this Declaration. The Association shall pay all utility bills not metered or charged separately to the Lots. Without limiting the foregoing, the Association shall maintain all private streets, all utilities, sewer and drainage systems not maintained by the government or by any other public or private utilities or by the Owners, parking areas, and landscaping and irrigation systems within the Project (except those located within a fenced patio or yard area). Maintenance of landscaping shall include regular

fertilization, irrigation and other garden management practice necessary to promote a healthy, weed-free environment for optimum plant growth. The Association shall maintain all fencing within the Project and shall provide for the removal of all debris.

In addition, the Association shall be responsible for maintenance, repair, and replacement of the following components of each Lot: exterior surfaces of the Residences (including, without limitation, painting as often as the Board deems necessary); original exterior lighting fixtures; rain gutters and caulking of the Residences; roofs and siding of the Residences (including, without limitation, remedying leaks in the roofs); original decks and balconies of the Residences; all front doors and original wooden doors in the Phase 3 Lots, and landscaping and gardening services within the portion of each Lot that is not located within a fenced patio or yard area. Such exterior maintenance shall not include glass surfaces, shutters, awnings, window boxes, doorframes, or screens. Notwithstanding the foregoing, if an Owner has made any alteration to the improvements originally constructed on the Owner's Lot by the original developer (other than replacing existing materials with the same type of materials), the Association shall not be responsible for any maintenance, repair or replacement of such altered component. For example, if an Owner expands the Owner's deck, the Owner shall be fully responsible for maintenance, repair and replacement of the new components of the deck. Each Owner shall maintain, repair and replace those portions and components of his/her Lot and Residence that the Association is not expressly obligated to maintain, repair or replace.

The responsibility of the Association for maintenance, repair and replacement under this Section shall not extend to maintenance, repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his or her guests, tenants, or invitees; except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make the payment, then the Association may make the payment and shall charge the responsible Owner, which charge shall bear interest at the rate of 12 percent per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his or her guests, tenants or invitees, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost to the

responsible Owner, which cost shall bear interest at the rate of 12 percent per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

B. Insurance. The Association shall maintain the policy or policies of insurance required by this Declaration.

C. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Areas, and charge the cost to the Member or Members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

D. Assessments. The Association shall fix, levy, collect, and enforce assessments as set forth in Article IV of this Declaration.

E. Payment of Expenses and Taxes. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

F. Enforcement. The Association shall be responsible for the enforcement of this Declaration. The Association shall maintain and operate the Common Areas of the Project in accordance with all applicable municipal, state, and federal laws, statutes, and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, ensure that third parties (including Owners and their guests) utilize the Common Areas in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct the violations.

G. Inspection of Common Areas. The Board shall periodically and at least once every three years cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components for which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project, and to annually review and adjust the study, all in accordance with the provisions of the Bylaws.

H. Records. The Association shall cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members and, in addition, at any special meeting when such is requested in writing by five percent (5%) of the voting membership.

I. Supervision. The Board shall supervise all officers, agents, contractors and employees of this Association, and to see that their duties are properly performed.

J. Furnish Documents: The Board shall furnish to each Member, not less than 30 days nor more than 90 days before the beginning of the Association's fiscal year: (1) a statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of Assessments against Members; and (2) a summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, which shall include all of the information required by Civil Code Section 1365(f), as the same may be amended from time to time. In addition, the Board shall furnish to each Member, within the 60 day period immediately preceding the beginning of the Association's fiscal year, the notice required by Civil Code Section 1365.1(b), as the same may be amended from time to time.

K. Operating Budget: The Board shall prepare and distribute to each Member, at least 30 and not more than 90 days before the beginning of the Association's fiscal year, the pro-forma operating budget referenced in the Declaration and required by Civil Code Section 1365, as may be amended from time to time, or to distribute a summary of such budget in accordance with the provisions of Civil Code Section 1365(d).

L. Financial Statements: The Board shall cause a review of the financial statement of the Association to be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000, and distribute a copy of the review within 120 days after the close of each fiscal year, in accordance with Civil Code Section 1365(c), as may be amended from time to time.

5.2. **Powers**. In addition to the powers enumerated in the Articles and Bylaws or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

A. Easements. The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map when necessary for roads, utilities, cable television, and sewer facilities over the Common Areas to serve the common and open space areas and the Lots, or when necessary to satisfy or achieve an appropriate governmental

purpose or request.

B. Manager. The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures.

C. Adoption of Rules. The Board may adopt reasonable rules that are not inconsistent with this Declaration relating to the use of the Common Areas and all its facilities and the conduct of Owners and their tenants and guests with respect to the Project and other Owners. Written copies of the Rules, and any schedule of fines and penalties adopted by the Board, or any amendments, shall be furnished to Owners by personal delivery or first-class mail at least 30 days before the effective date of the Rules/Schedule ("Schedule") and any amendments thereto. The notice required for any Rule change shall include the text of the proposed rule change and a description of the purpose and effect of the proposed Rule change. Notwithstanding the foregoing, notice is not required if the Board determines that an immediate Rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association. A decision on a proposed Rule change shall be made at a meeting of the Board, after consideration of any comments made by Members. As soon as possible after making a Rule change, but not more than 15 days after making the Rule change, the Board shall deliver notice of the Rule change to every Member. If the rule change was an emergency rule change, the notice shall include the text of the Rule change, a description of the purpose and effect of the Rule change, and the date that the Rule change expires.

If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, the Board may make an emergency Rule change, and no notice is required. An emergency Rule change shall be effective for 120 days, unless the rule change provides for a shorter effective period. An emergency Rule change may not be readopted as an emergency Rule change.

D. Access. For the purpose of performing construction, maintenance, or emergency repair for the benefit of the Common Areas or the Owners in common, or to perform maintenance work that an Owner has failed to perform, the Association's agents or employees shall have the right, after reasonable notice (in no case less than 24 hours except in emergencies) to the Owner of the Lot on

which maintenance work has not been performed, to enter that Lot or to enter any portion of the Common Areas at reasonable hours. Entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused by that entry shall be repaired by the Board at the expense of the Association.

E. Assessments, Liens, Penalties and Fines. The Board shall have the power to levy and collect assessments in accordance with the provisions of Article IV of this Declaration. The Board may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, temporary suspension of voting rights or rights to the use of Common Areas recreational facilities, or other appropriate discipline, provided the Member is given notice and an opportunity to be heard as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a Schedule of reasonable fines and penalties for violations of the terms of the Governing Documents. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay assessments shall be for a maximum period of 30 days, renewable by the Board for an additional 30-day period or periods until paid; and provided further that suspension for infraction of the Rules or violation of this Declaration, other than for failure to pay assessments, shall be limited to a maximum period of 30 days per infraction or violation, and shall be imposed only after an opportunity to be heard before the Board. The Board may extend that period for an additional 30-day period or periods in the case of a continuing infraction or violation, and no hearing need be held for the extension. Written copies of the Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce assessments as appropriate under applicable law.

Notwithstanding any other provision of this Declaration, neither the Board nor the association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his/her individually owned Lot including access thereto over and across the Common Areas, because of such Owner's failure to comply with the provisions of this Declaration or of the Bylaws or any Rules adopted by the Association except when such loss or forfeiture is the result of a judgment of a court, a decision out of binding arbitration or on account of a Foreclosure, or under the power of sale granted herein for failure to pay assessments. In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include costs of collection, court costs, litigation expenses and reasonable attorneys' fees.

F. Enforcement. The Board shall have the authority to enforce this Declaration as per Section 9.1 of this Declaration.

G. Acquisition and Disposition of Property. The Board shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by three-fourths (3/4) of the total voting power of the Association.

H. Loans. The Board shall have the power to borrow money and, only with the assent (by vote or written consent) of three-fourths (3/4) of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

I. Dedication. The Association shall have the power to dedicate all or any part of the Common Areas to any public agency, authority, or utility for those purposes and subject to those conditions as may be agreed to by the Members. No dedication shall be effective unless an instrument has been signed by three-fourths (3/4) of the total voting power of the Association agreeing to the dedication.

J. Contracts. The Board shall have the power to contract for goods or services for the Common Areas, for the Lots, or for the Association, subject to limitations set forth in the Bylaws or elsewhere in this Declaration.

K. Delegation. The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers, or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his or her tenant, lessee, guest, or invitee with the Declaration, Bylaws, or Rules;

(3) To make a decision to levy monetary fines, impose special assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association, or otherwise impose discipline;

(4) To make a decision to levy regular or special assessments; or

(5) To make a decision to bring suit, record a claim of lien, or institute Foreclosure proceedings for default in payment of assessments.

L. Security. The Association shall have the power (but not the obligation) to contract for security service for the Common Areas.

M. Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in this Declaration and California Civil Code section 1367, subdivision (b).

N. Litigation/Arbitration. The Association, subject to Sections 10.11 and 10.12 of this Declaration, shall have the power to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings on behalf of the Association.

O. Common Areas Improvements. The Association shall have the authority and power to demolish, remove, and reconstruct any and all improvements on or over or under the Common Areas in a manner not inconsistent with this Declaration, and to construct, improve, and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of those improvements, provided that the Association shall not include in any assessment, regular or special, the cost of any new capital improvement that exceeds \$20,000 in cost to be expended in any one calendar year, unless 51 percent or more of the voting power of the Association previously shall have approved that expenditure.

P. Utilities. The Association shall have the power to acquire and pay for water service and trash or garbage service for all homes situated in the Project, and to arrange for all utilities to serve the homes. Any funds collected from Owners for the payment of water service or trash or garbage service shall be segregated from all other funds and shall be used for no purpose other than providing water service, and trash and garbage service.

Q. Other Powers. In addition to the powers contained in this Declaration, the Board may exercise any powers granted to it by the Bylaws, the Articles, or California law.

ARTICLE VI.

UTILITIES

6.1. **Owners' Rights and Duties**. The rights and duties of the Owners of Lots within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues and heating and air-

conditioning facilities (collectively, “utility facilities”) shall be as follows:

A. Whenever utility facilities are installed within the Project, which utility facilities or any portion of those facilities lies in or upon Lots owned by other than the Owner of a Lot served by those utility facilities, the Owners of any Lot served by those utility facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain those utility facilities as and when necessary.

B. Whenever utility facilities serving more than one Lot are installed within the Project, the Owner of each Lot served by those utility facilities shall be entitled to the full use and enjoyment of the portions of those utility facilities as service the Owner's Lot.

C. In the event of a dispute between Owners with respect to the repair or rebuilding of utility facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one Owner addressed to the other Owners involved in the dispute, the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within 60 days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution. The decision of the arbitrator shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

6.2. Owner Responsibilities. Each Owner shall maintain, repair and/or replace all utility facilities located within the Owner's Lot and serving solely the Owner's Lot, including, without limitation, internal wiring, distribution panels, electrical systems serving solely the Owner's Lot, plumbing fixtures within a Lot, plumbing systems located on a Lot and solely serving the Lot, and heating, ventilating and air conditioning systems that are located on a Lot and solely serve the Owner's Lot. Notwithstanding the foregoing, an Owner shall not be responsible for maintaining, repairing or replacing exterior lighting fixtures, which shall be the Association's responsibility.

6.3. Association Responsibilities. The Association shall maintain, repair and/or replace all utility facilities located within the Project except for those facilities that are the Owner's responsibility, as set forth herein, or those facilities that are maintained by utility companies, public, private, or municipal.

ARTICLE VII.

ARCHITECTURAL CONTROL

7.1. **Architectural Control.** The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Review Committee ("ARC") consisting of 3 Owners appointed by the Board. If there is no ARC, then all references herein to ARC shall mean the Board.

7.2. **Approval Required.** No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, awning, carport, carport cover, trellis, improvement or structure of any kind shall be constructed, performed, installed, altered or demolished, nor shall the exterior appearance of any Residence be changed until plans have been submitted and approved pursuant to this Article, unless otherwise provided herein. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of his/her Residence (provided that the structural integrity of the building is not compromised), or to paint the interior of his/her Residence any color desired.

No landscaping of patios or yards or portions of Lots visible from the street or from any Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the ARC.

7.3. **Architectural Standards.** The ARC shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board may, from time to time, adopt architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards shall constitute Rules.

7.4. **Application.** Any Owner who wants to perform any Alteration or addition for which approval is required shall notify the ARC in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the ARC. The ARC may approve the proposal only if the ARC finds that: (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted; and (ii) the proposed Alteration or addition will be consistent with the standards of the Project and

the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation. All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. A decision on a proposed change shall be made in writing, and shall be mailed to the applicant within five (5) business days of the decision. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the decision by the Board. If a proposed change is disapproved, the applicant shall be entitled to reconsideration by the Board at any open meeting of the Board (unless the original decision was made at an open meeting of the Board). If a decision on an application has not been made within sixty (60) days from the date of submission of the application and all additional information and materials requested by the Board or the ARC, then the application shall be automatically deemed approved.

7.5. Solar Energy Systems. The Architectural Review Committee shall not restrict or prohibit the installation or use of a solar energy system, except that it may adopt reasonable restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

7.6. Commencement and Completion of Construction. Upon approval of the ARC or the Board, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within six (6) months from the date of the approval and be completed within one (1) year from the date of approval, unless a written extension is requested from and approved by the Board. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the ARC or Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the ARC or Board finds that there has been no change in the circumstances under which the original approval was granted.

7.7. ARC Members. The Board shall have the power to appoint all of the members of the ARC, who shall be Members of the Association. In the event of death or resignation of any member of the ARC, the Board shall appoint a successor. The members of the ARC shall not be entitled to any compensation for services performed pursuant to this Declaration, but they shall be entitled to reimbursement for authorized expenses incurred in the performance of their duties.

7.8. Non-liability. Approval of plans by the ARC or the Board shall in no way make the ARC or its members or the Board or its members, or the Association responsible for or liable for the improvements built or modifications made after approval

of the plans, and the Owner whose plans are approved shall defend, indemnify, and hold the ARC, and its members, and the Board, and its members, and the Association and its officers, directors, agents and employees harmless from any and all liability arising out of that approval.

7.9. Compliance with Laws. Before commencement of any alteration or improvements approved by the ARC, the Owner shall comply with all appropriate governmental laws and regulations, including determining whether a County building or other permit or approval is required and obtaining any and all such required permits and approvals.

ARTICLE VIII.

USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Lot in the Project is subject to the following:

8.1. Lot Use. No Lot shall be occupied and used except for residential purposes by the Owners, their family members, tenants, and social guests, and no trade or business shall be conducted in any Lot except that a Lot may be used as a combined residence and executive or professional office by the Owner, as long as: (1) that use does not interfere with the quiet enjoyment by other Owners; (2) no evidence of the use is apparent from the exterior of the residence; (3) no significant increase in traffic results from the use; and (4) the use is permitted by applicable ordinances. No tent, shack, trailer, basement, garage, outbuilding, or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

8.2. Nuisances. No noxious, illegal, or seriously offensive activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done there that may be or may become a serious annoyance or a nuisance to, or that may in any way interfere with, the quiet enjoyment of the Owners' Lots, or that shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or cause a refusal to renew the policy, or that will impair the structural integrity of any building.

8.3. Vehicle Restrictions and Towing. No trailer, camper, mobile home, commercial vehicle, recreational vehicle, truck (other than a standard size pick-up truck), or vehicle that is too large to fit within the owner's garage (or parking space), boat, inoperable vehicle, or similar equipment shall be permitted to be parked or remain upon any area within the Project other than temporarily. Permitted vehicles that are used both for business and personal use are not prohibited provided that any signs or markings of a

commercial nature on their vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project except within an enclosed garage.

Unauthorized vehicles may be towed from the Project in accordance with applicable laws concerning towing. If a vehicle towed from the Project is owned or operated by a resident of the Project, the charges for towing (if not paid by the Owner of the Lot responsible for the vehicle) shall become a lien against the Owner's Lot as a reimbursement assessment.

Specific requirements concerning vehicle restrictions and towing may be further defined in the Rules from time to time.

8.4. Parking. All Common Area parking spaces shall remain permanently available for guest parking. Garage space shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description, nor for the conversion into habitable space such as by way of definition only, a hobby shop or recreation room. Owners are to use their garages for parking of their vehicles so that Common Area parking will be available for guest parking. The Association may establish rules and regulations from time to time for the parking of vehicles in the Common Area.

8.5. Signs. Unless authorized by the Rules or otherwise required by law, no commercial sign or poster shall be displayed to the public view on any Lots or any portion of the Project, except that each Owner may display no more than one "For Sale" or "For Rent" or "For Exchange" sign of no more than five (5) square feet in size. Noncommercial signs that do not exceed 9 square feet in size shall be permitted in accordance with the provisions of California Civil Code Section 1353.6.

8.6. Animals. No animals of any kind shall be raised, bred, or kept in any Lot, or on any portion of the Project, except that one usual and ordinary household pet, such as a dog, a cat, a bird, or aquatic animals kept within an aquarium, provided that no pet shall be kept, bred, or maintained for any commercial purposes. The Board will consider formal requests for one additional pet, and shall have authority to grant such requests with conditions, and shall have the right to withdraw such permission for cause. Guest pets shall abide by the same restrictions as other pets.

All pets shall be kept under control at all times. No pet shall be allowed in the Common Area except as may be permitted by the Rules. No Owner shall allow his or her dog to enter the Common Areas except on a leash held by a person who is capable of

controlling it. Owners shall prevent their pets from soiling any portion of the Common Areas and shall promptly clean up any mess left by their pets. Owners shall be fully responsible for any damage caused by their pets. No Owner shall allow such Owner's pet to be a serious annoyance or nuisance to any other Owner.

8.7. Garbage and Refuse Disposal. All rubbish, trash, and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate on any Lot or within the Common Areas. Trash, garbage, and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of waste materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots, Common Areas and streets except when put out for pick-up.

8.8. Antennas/Satellite Dishes. No external antenna, tower, pole, satellite dish or other equipment used for transmission purposes (collectively, "Transmission Equipment") shall be constructed or installed on any Lot without the approval of the Board or the ARC. The Board and ARC reserve the right to impose reasonable restrictions on the installation or use of Transmission Equipment.

8.9. Structural Integrity. Nothing shall be done in or on any Lot or in or on the Common Areas that will impair the structural integrity of any building.

8.10. Rental of Lots. An Owner shall be entitled to rent or lease his Lot if: (i) there is a written rental or lease agreement specifying that the tenant shall be subject to all provisions of the Governing Documents and a failure to comply with any provision of the Governing Documents shall constitute a default under the agreement; (ii) the Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Governing Documents; and (iii) the Owner gives each tenant a copy of the Governing Documents. Upon satisfaction of the foregoing conditions all rights to the use and enjoyment of the Common Area shall be exercised by the tenant rather than by the Owner of the leased or rented Lot.

8.11. Activities Causing Increase in Insurance Rates. Nothing shall be done or kept in any Lot or in any improvements constructed on any Lot, or in the Common Areas, that will increase any applicable rate of insurance or that will result in the cancellation of insurance on any Lot or any part of the Common Areas, or that would be in violation of any law.

8.12. Window Coverings. No portion of any drapes, blinds or curtains which are installed on the interior of any Residence which may be seen from outside such Residence shall be of a color, texture or material which, in the reasonable opinion of the Board or ARC, is inharmonious with the exterior appearance of all Residences. All drapes,

window shades or other window coverings installed in the windows of Residences which are visible from the exterior of the Residence shall comply with the Rules, if applicable. No window covering shall consist of cardboard, paper, or a sheet, blanket, flag or loose fabric. Any drapes or other window covering installed in compliance with the Architectural Rules may remain for the useful life thereof.

8.13. Liability of Owner for Damage to Common Area. The Owner of each Lot shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such Owner or any occupant of his/her Lot or guest, except for that portion of said damage, if any, fully covered by insurance (in which case the Owner shall pay any deductible). Liability of an Owner shall be established only after notice to the Owner and an opportunity to be heard in accordance with the Bylaws.

8.14. Clothes Lines. No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes and other laundry.

8.15. Power Equipment and Vehicle Maintenance. No hobby shops, or vehicle maintenance, or boat maintenance (other than emergency work) shall be permitted on the property except with prior written approval of the Board and for a limited period of time. Approval of any power equipment usage shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar things.

ARTICLE IX.

INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

9.1. Insurance. The Association shall obtain and maintain as specified below:

A. Types of Insurance. The Association shall obtain and maintain the following insurance:

(1) A master hazard policy insuring all improvements, equipment, and fixtures in the Project (including the Residences) with policy limits of no less than the full replacement cost of the covered improvements (without respect to depreciation), excluding foundations and footings in either instances. An inflation guard endorsement shall be part of the policy.

(2) If obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective

family members, against liability incident to the ownership or use of the Common Areas or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the greater of \$2,000,000, or the minimum amount required by California Civil Code section 1365.9. In addition, the Association shall maintain officers and director's liability insurance in the greater of \$500,000 or the minimum amount required by Civil Code section 1365.7(a)(4).

(3) Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(4) Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(5) Flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(6) Officers and directors liability insurance in the minimum amounts required by California Civil Code section 1365.7; and

(7) Such other insurance as the Board in its discretion considers necessary or advisable.

B. Amount, Term, and Coverage. The amount, term, and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall comport with that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, and unless otherwise provided herein, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a special assessment, in accordance with the provisions of this Declaration, with respect to the amount of any such deductible that exceeds funds available to the Association from Association funds or from borrowing.

C. Representation for Claims. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

D. Waiver of Subrogation. Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its officers, Directors and Members, the Owners and occupants of the Lots and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, Directors and Members, the Owners and occupants of the Lots and mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

E. Review of Policies. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

F. Limitation on Liability. The Association, and its Directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

9.2. Individual Insurance. The insurance policies carried by the Association are not intended to cover any improvement or any personal property situated within an individual Residence. Therefore, each Member is responsible for determining and obtaining the type and amount of insurance needed to insure all improvements (which existed at the time of original construction of the Residence and which are or were subsequently added) and personal property located within his/her Residence. If a policy carried by the Association offers coverage for a claim made by a Member as a result of damage to any improvement or personal property within a Residence, the Member shall be responsible for paying any deductible, if the Member opts to adjust his/her claim under

the Association's policy. No Owner shall be entitled to exercise his/her right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

9.3. Damage or Destruction.

A. Damage and Destruction Affecting Residences – Duty to Rebuild: If all or any portion of any Residence is damaged or destroyed by fire or other casualty it shall be the duty of the Owner of said Residence to rebuild, repair or reconstruct said Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty. The Board shall be responsible for making available to the Owner the proceeds of the master insurance policy for the reconstruction and repair of the damaged Residence.

B. Variance in Exterior Appearance and Design: Any Owner whose Residence has suffered damage may apply to the ARC for approval of reconstruction, rebuilding, or repair of his/her Residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans, specifications, working drawings and elevations showing the proposed reconstruction and the end result thereof. The ARC shall grant such approval only if the design proposed by the Owner would result in a finished residence in harmony of the exterior design with other Residences in the Project.

C. Time Limitation: The Owner or Owners of any damaged Residence and the ARC shall be obligated to proceed with all due diligence hereunder and the Owner shall commence reconstruction within three (3) months after the permits authorizing reconstruction are issued, and shall complete reconstruction within six (6) months after commencing the work, unless prevented by causes that are beyond the Owner's reasonable control.

D. Common Area Destruction: In the event of substantial damage to or destruction of any Lot or any part of the Common Area, the institutional lender, with respect to such Lot, will be entitled to timely written notice of such damage or destruction and no provision of the Declaration or the Bylaws will entitle the Owner of the Lot or other party to priority over such institutional lender with respect to the distribution to such Lot of any insurance proceeds. Provided, however, that in no event shall hazard insurance proceeds for losses to any portion of the Common Area be used for other than the repair, replacement or reconstruction of such damaged Common Area unless three-fourths (3/4) of the Members give their prior written assent thereto.

E. Insurance; Damage or Destruction: If any of the Project improvements are damaged by fire or other casualty, insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with the original plans and specifications therefor, subject to the provisions of subsection D, above. Custom-built items added by Owners to their Residences shall be rebuilt or replaced at the expense of Owners or their individual insurers.

Any excess insurance proceeds shall be deposited to the general funds of the Association. In the event the proceeds of the Association's insurance policy are insufficient to rebuild or repair the insured area, then the Association may use funds from its account or if necessary from levying a special assessment on all Lots to restore or rebuild said insured area, subject to the limitations on special assessments set forth herein.

9.4. **Condemnation.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas or any part of the Common Areas. In the event of a taking or acquisition of part or all of the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or to any trustee appointed by the Association. The Board may, in its discretion, either apply the award toward the Association's reserve funds, or distribute the award (or so much of the award as the Board determines appropriate) to the Owners on an equal basis for each Lot owned, subject to the rights of First Mortgagees.

In the event of an award for the taking of any Lot in the Project by eminent domain, the Owner of the Lot taken shall be entitled to receive the award for the taking, subject to the rights of First Mortgagees, and after acceptance of the award the Owner and the Owner's mortgagee shall be divested of all interest in the Project, if the Owner shall vacate his or her Lot as a result of the taking.

ARTICLE X.

GENERAL PROVISIONS

10.1. **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles, and the Bylaws, and in that action shall be entitled to recover reasonable attorney fees as are ordered by the Court. The Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be

deemed a waiver of the right to do so thereafter.

10.2. Invalidity of Any Provision. Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions shall remain unaffected and in full force and effect.

10.3. Term. The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, and successors and assigns, for a term of 30 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of 10 years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

10.4. Amendments. This Declaration may be amended only by the affirmative vote or written consent of Members representing a majority of the total voting power of the Association; however, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County.

10.5. Encroachment Rights. If any portion of the Common Areas encroaches on any Lot or any part of a Lot, or any part of a Lot encroaches on any Common Areas, due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair, or replace the encroachment as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement, or shifting, provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of that Owner or Owners. If a structure is partially or totally destroyed and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots or Common Areas shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments as long as they shall exist. If an error in engineering, design, or construction results in an encroachment of a building into the Common Areas, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the Map. That modification may be in the form of a certificate of correction if permitted by the provisions of applicable law.

10.6. Rights of First Lenders. No breach of any of the covenants, conditions, and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Mortgage on any Lot made in good faith and for value, but all of those covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Project Documents to the contrary, First Lenders shall have the rights and protections set forth in the following paragraphs:

A. Copies of Governing Documents. The Association shall make available to Lot Owners and First Lenders, and to holders, insurers, or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles, and Rules concerning the Project, and the books, records, and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the requested documents, which fee may not exceed the reasonable cost to prepare and reproduce them.

B. Statement. Any holder of a First Mortgage shall be entitled, upon written request, to have a financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available.

C. Notice of Action. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, that Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss that affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured, or guaranteed by that Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) Any default in performance of obligations under the Governing Documents or delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured, or guaranteed by that Eligible Mortgage Holder or Eligible Insurer or Guarantor, which default remains uncured for a period of 60 days;

(3) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action that would require the consent of a specified percentage

of Eligible Mortgage Holders as specified in other provisions of this Declaration.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to them at the address given on the current request for notice in the manner prescribed by this Declaration.

D. Contracts. Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to purchasers, must provide for termination by either party for cause on 30 days' written notice, or without cause and without payment of a termination fee or penalty on 90 days' or less written notice.

E. Priority of Liens. Any lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Lot. Each holder of a First Mortgage lien on a Lot who comes into possession of the Lot by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure sale under a first deed of trust, will take the Lot free of any claims for unpaid assessments and fees, late charges, fines, or interest levied in connection with those claims against the Lot that accrue prior to the time that the holder takes title to the Lot, except for claims for a pro rata share of those assessments or charges to all Lots, including the mortgaged Lot, and except for assessment liens as to which a notice of delinquent assessment has been recorded prior to the Mortgage.

F. Distribution of Insurance or Condemnation Proceeds. No provision of the Governing Documents gives an Owner or any other party priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Lots or Common Areas.

G. Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by Foreclosure, or by a deed in lieu of Foreclosure or by an assignment in lieu of Foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of mortgages under this Declaration.

H. Right to Appear at Meetings. Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

10.7. Owner's Right and Obligation to Maintain and Repair. Except for those portions of the Project that the Association is expressly required to maintain and repair, each Lot Owner shall, at his or her sole cost and expense, maintain, repair, restore and replace, as necessary, all portions and components of his/her Lot and Residence, keeping the same in good condition. If any Owner fails to carry out necessary maintenance, repair, or replacement work on his/her Lot, the Board may, following notice and hearing as provided in the Bylaws, cause that work to be done, and the cost of the work shall immediately be paid by the Owner to the Association and until paid shall bear interest at the rate of 12 percent per year (but no greater than the maximum rate authorized by law).

10.8. Owners' Compliance. Each Owner, tenant, or occupant of a Lot shall comply with the provisions of this Declaration and, to the extent they are not in conflict with the Declaration, with the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any of these provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for fines (4) for injunctive relief, (5) for costs and attorney fees, or (6) any combination of the foregoing.

In the event of a violation of the Governing Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Lot of the noncomplying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when, and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a noncomplying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws shall be deemed to be binding on all Owners and their successors and assigns.

10.9. Notice. Any notice permitted or required by the Declaration or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 72 hours after a copy of the notice has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by that person to the Secretary of the Board or addressed to the Lot of that person, if no address has been given to the Secretary.

10.10. **Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging, or occupancy of his or her Lot to any person of a specified race, sex, sexual orientation, age, marital status, color, religion, ancestry, physical handicap, or national origin, nor shall any Owner violate any law in the sale, leasing, mortgaging, or occupancy of his or her Lot.

10.11. **Disputes Between Association and Member; "Meet and Confer".** In addition to the applicable requirements of Section 10.12, in any dispute between the Association and a Member involving their rights, duties or liabilities under the Davis-Stirling Common Interest Development Act, the Nonprofit Mutual Benefit Corporation Law, or under the governing documents of the Association, the "meet and confer" procedures set forth in Civil Code section 1363.840, as the same may be amended from time to time, shall apply.

10.12. **Alternative Dispute Resolution.** Neither the Association nor any Member shall file an enforcement action in the superior court for purposes of enforcing the Davis-Stirling Common Interest Development Act, the Nonprofit Mutual Benefit Corporation Law, or any provision of the Articles, Bylaws or this Declaration, unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to Civil Code section 1369.510 et seq., as the same may be amended from time to time. Notwithstanding the foregoing, no such alternative dispute resolution procedures need be attempted for an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the minimum jurisdictional limited stated in California Code of Civil Procedure Sections 116.220 and 116.221. Except as otherwise provided by law, the alternative dispute resolution procedures shall not apply to an assessment dispute.

10.13. **Structural Walls.** In all cases where a structural wall constituting a portion of a single Residence, or a structural wall constituting a common wall for two Residences, is located upon the dividing line between adjacent Lots, the Owners of said adjoining Lots shall have reciprocal mutual nonexclusive easements for access to and maintenance of said wall, the reconstruction of said wall in the event of the partial or total destruction of the same, drainage associated with said wall or the Residence of which said wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the Residence on said Lot. Such entry shall be at reasonable times after prior notice, except that in case of an emergency, the right of entry shall be immediate.

The Owner of a Lot having a structural wall situated on the boundary line between said Owner's Lot and the adjoining Lot shall not attach anything to the outside of the wall

which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of said wall without (in each case) the consent and permission of the Owner of the adjoining Lot upon which the Residence of which said wall is a part is situated. Any dispute between Owners under this provision shall be submitted to binding arbitration under the provisions of California Code of Civil Procedure Section 1280 *et seq.*

10.14 Party Walls. The general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls to the extent not inconsistent with the provisions of this Declaration.

A. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use. If a Party Wall is damaged or destroyed by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and each Owner who uses the wall shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Except to the extent that such damage or destruction is caused by an act or omission of the Association, the Owners who use the Party Wall shall pay any deductible owing to any insurance company in equal proportion without prejudice, however, to the right of any such Owner to call for a larger contribution from the others as described above.

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

C. Each Residence that shares a Party Wall is declared to have an easement appurtenant, including the right to enter upon such adjoining Lot to service and maintain such easement and service, maintain, repair or replace the Party Wall, Such entry shall be at reasonable times after prior notice, except that in case of an emergency, the right of entry shall be immediate.

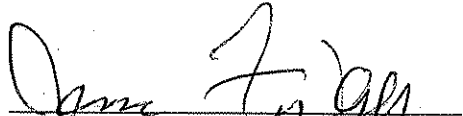
D. The right of any Owner to contribution from any other Owner under this provision shall be appurtenant to the land and shall pass to such Owner's successors in title.

E. Any dispute between Owners under this provision shall be submitted to binding arbitration under the provisions of California Code of Civil Procedure Section 1280 *et seq.*

10.15. **Number; Gender.** The singular and plural number and masculine, feminine, and neuter gender shall each include the other when the context requires.

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association, certified that this amended Declaration was adopted by the requisite vote of the Owners.


President Robert J. Fennell


Secretary Jesse Fielding

STATE OF CALIFORNIA)
COUNTY OF Santa Cruz)

On November 27, 2012, before me, Catherine A. Philipovitch, Notary Public, personally appeared Robert Jack Fennell, 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 Cather A. Philipovitch



STATE OF CALIFORNIA)
COUNTY OF Santa Cruz)

On November 27, 2012, before me, Catherine A. Philipovitch, Notary Public, personally appeared Jesse Alfred Fielding, 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 Cather A. Philipovitch

(Seal)

