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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
VILLAGE AT HIDDENBROOKE ASSOCIATION**

**VILLAGE AT HIDDENBROOKE
ASSOCIATION**

**AMENDED AND RESTATED
DECLARATION**

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGE AT HIDDENBROOKE ASSOCIATION

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date set forth at the end of this document by VILLAGE AT HIDDENBROOKE ASSOCIATION, a California nonprofit mutual benefit corporation (referred to in this document as the "Association").

RECITALS OF BACKGROUND FACTS; DECLARATIONS

- A. The Association is the successor in interest to Taylor Woodrow Homes, Inc., a California corporation, which, as Declarant, executed that certain "Declaration of Covenants, Conditions and Restrictions of Village at Hiddenbrooke, a Common Interest Development," dated August 20, 2001, and recorded on August 31, 2001, Instrument No. 2001-00100063, Official Records of Solano County, State of California (referred to in this document as the "2001 Declaration").
- B. A declaration of annexation to the 2001 Declaration was recorded on September 4, 2001, as Instrument No. 2001-00101006, Official Records of Solano County, California. The 2001 Declaration together with this declaration is referred to herein as the "Original Declaration."
- C. The Original Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with, and are binding upon all parties having or acquiring any right, title, or interest in, that certain real property located in the County of Solano, State of California, and more particularly described as follows:

Lots 1 through 101, inclusive, and Parcels A through K, inclusive, and Andover Drive, Bromley Court, Nottingham Court, Rose Arbor Way, Sheffield Way, Stepping Stone Court, Summer Gate Avenue, and Wisteria Circle, as shown on the subdivision map of Village at Hiddenbrooke, filed for record on March 19, 2001, in Book 71 of Maps at Pages 77 through 83, inclusive, in the Official Records of the County of Solano, State of California.

- D. THE MEMBERS, by the requisite vote desire to amend, modify, and otherwise change the Original Declaration pursuant to Section 10.1 thereof, and DO HEREBY DECLARE that the Original Declaration shall be, and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Village at Hiddenbrooke Association.
- E. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph C, above, constitutes a planned development within the meaning of Section 4175 of the California *Civil Code*.
- F. IT IS FURTHER HEREBY DECLARED that all of the real property described in Recital Paragraph C, above, is and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions set forth herein, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.
- G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions set forth herein shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest or estate therein and their heirs, successors, and assigns.
- H. IT IS FURTHER HEREBY DECLARED that this Development is subject to an instrument entitled "Master Declaration of Covenants, Conditions and Restrictions of Hiddenbrooke," recorded in the Official Records of the Solano County Recorder on August 19, 1999, as Recorder's Series No. 99-71880, as may be amended in accordance with the procedures set forth in said Master Declaration.

ARTICLE 1 DEFINITIONS

- 1.1 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures including, but not limited to, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.
- 1.2 Architectural Committee. "Architectural Committee" shall mean the Committee, if any, appointed pursuant to Article 7 ("Architectural Approval").

- 1.3 Articles. "Articles" shall mean the Amended and Restated Articles of Incorporation of Village at Hiddenbrooke Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.4 Assessments. "Assessments" shall mean any or all of the following: Regular Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.5 Association. "Association" shall mean Village at Hiddenbrooke Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.6 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.7 Bylaws. "Bylaws" shall mean the Amended Bylaws of the Association as they shall be duly adopted by the Board of Directors and the Members and any duly-adopted amendments thereof.
- 1.8 City. "City" shall mean the City of Vallejo.
- 1.9 Civil Code. "*Civil Code*" shall mean the California *Civil Code* as amended from time to time.
- 1.10 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and Residents of the Development. The Common Area comprises Parcels A, B, C, D, E, F, G, H, I, J, and K and Andover Drive, Bromley Court, Nottingham Court, Rose Arbor Way, Sheffield Way, Stepping Stone Court, Summer Gate Avenue, and Wisteria Circle, as shown on the map of Village at Hiddenbrooke, filed for record on March 19, 2001, in Book 71 of Maps at Pages 77 through 83, inclusive, in the Official Records of the County of Solano, State of California.
- 1.11 Contract Purchaser / Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.12 Corporations Code. "*Corporations Code*" shall mean the California *Corporations Code* as amended from time to time.
- 1.13 County. "County" shall mean the County of Solano.
- 1.14 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Village at Hiddenbrooke Association,

recorded in the Office of the County Recorder of Solano County, California, and any duly recorded amendments thereof.

- 1.15 Development. "Development" shall mean all the real property described in this Declaration comprising the Village at Hiddenbrooke Association planned development and any additional real property as may hereafter be brought within the jurisdiction of the Association.
- 1.16 Dwelling. "Dwelling" shall mean a structure designed for human residential use and occupancy which is located upon a Lot.
- 1.17 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 8.11.
- 1.18 First Mortgage / First Mortgagee. "First Mortgage" shall mean a Mortgage that has first priority over all other Mortgages. "First Mortgagee" shall mean the beneficiary under a First Mortgage.
- 1.19 Golf Course. "Golf Course" shall mean the real property defined as Golf Course in the Master Declaration and any other portion of the overall Hiddenbrooke project which is from time to time used for golf course purposes, including, without limitation, roughs, fairways, and greens.
- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.21 Individual Delivery / Individual Notice. "Individual Delivery" or "Individual Notice" shall mean delivery to a Member or Members by one of the following methods, as provided in *Civil Code* section 4040:
- (a) By first class mail with postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, addressed to the recipient at such recipient's address last shown on the books of the Association; or
 - (b) By email, facsimile, or other electronic means if the recipient has consented in writing to that method of delivery. The consent may be revoked, in writing, by the recipient. Delivery by electronic transmission must also comply with *Corporations Code* sections 20 and 21. Among other things, Section 20 of the *Corporations Code* requires the Association to obtain consent from the person to whom the document is transmitted to receive it by means of electronic transmission as well as other technical requirements.
- 1.22 Lot. Lots 1 through 101 as shown on the Subdivision Map(s). There are 101 Lots in the Development.

- 1.23 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep. In the case of landscaping, "maintenance" or to "maintain" shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- 1.24 Majority of a Quorum. "Majority of a Quorum" shall mean a majority of the votes cast in any lawful vote or election by the Members in which the number of ballots cast equals or exceeds the number required to establish a quorum.
- 1.25 Master Declaration. "Master Declaration" shall mean that instrument entitled "Master Declaration of Covenants, Conditions and Restrictions of Hiddenbrooke, recorded in the Official Records of the Solano County Recorder on August 19, 1999, as Recorder's Series No. 99-71880, as may be amended in accordance with the procedures set forth in said Master Declaration.
- 1.26 Member. "Member" shall mean an Owner.
- 1.27 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and Additional Charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents. A Member shall be deemed to be in Good Standing unless, after notice and an opportunity for hearing, pursuant to Article 14 ("Enforcement; Notice; Hearings"), the Board has found the Member to be not in Good Standing and has so notified the Member in accordance with *Civil Code* section 5855.
- 1.28 Mortgage / Mortgagee. "Mortgage" shall mean a duly recorded deed of trust or mortgage in the conventional sense encumbering a Lot. "Mortgagee" shall mean a beneficiary under a Mortgage.
- 1.29 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including Contract Sellers but excluding Contract Purchasers, and excluding those persons having such interest merely as security for the performance of an obligation.
- 1.30 Party Fence. See Section 10.1 ("Party Fence Defined").
- 1.31 Prohibited Vehicle. See Section 5.17.3 ("Prohibited Vehicles").
- 1.32 Regular Assessment. "Regular Assessment" shall have the meaning set forth in Section 8.7.

- 1.33 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.10.
- 1.34 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.35 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has deteriorated or has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition. In the case of landscaping, "replacement" or to "replace" shall mean the removal and replanting of trees, shrubs, lawns, and other plants that are dead or dying or otherwise not serviceable or the substitution of plants for hardscape or substitution of hardscape for plants.
- 1.36 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner.
- 1.37 Restricted Vehicle. See Section 5.17.4 ("Restricted Vehicles").
- 1.38 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Development, including the use of the Common Area and facilities, the personal conduct of Owners and Residents, members of their household, pets, tenants, invitees, and guests within the Development, enforcement of the Governing Documents, and any other matter that is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 4340 and following.
- 1.39 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.8.
- 1.40 Subdivision Map. "Subdivision Map" or "Map" shall mean that certain map entitled "The Village at Hiddenbrooke," recorded March 19, 2001, in Book 71, Pages 77 through 83, inclusive, in the Office of the County Recorder of Solano County. A copy of the Subdivision Map is attached hereto for reference as Exhibit A.
- 1.41 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

ARTICLE 2 HOMEOWNERS ASSOCIATION

- 2.1 Management and Operation; Bylaws. The Association is an “association” as defined in *Civil Code* section 4080 and as such shall have the power and the authority to manage and operate the Development in accordance with the Governing Documents and the provisions of applicable law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Provisions concerning the operation of the Association as a nonprofit mutual benefit corporation are set forth in the Bylaws.
- 2.2 Legal Standing. To the fullest extent permitted by law, including *Civil Code* section 5980, the Association shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as a real party in interest, and without joining with it the Owners, in matters pertaining to the following:
- (a) Enforcement of the Governing Documents;
 - (b) Damage to the Common Area;
 - (c) Damage to the separate interests that the Association is obligated to maintain, repair, or replace;
 - (d) Damage to a separate interest that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain, repair, or replace.
- 2.3 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her ownership of such Lot ceases for any reason. Fee ownership of a Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 2.4 Voting. Only Members in Good Standing shall be entitled to vote and only one vote (1) shall be cast for each Lot, as more particularly set forth in the Bylaws.
- 2.5 Association Rules. Subject to applicable law including *Civil Code* section 4340 and following, regarding notice and procedures, the Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.

ARTICLE 3 PROPERTY SUBJECT TO THIS DECLARATION

- 3.1 Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Recital Paragraph C.
- 3.2 Classification of Property. The property subject to this Declaration is a planned development. All of the property subject to the Declaration is divided into the following categories:
- (a) Common Area;
- (b) Lots.
- 3.3 Undivided Interests Cannot Be Changed. The undivided interests in the Common Area established in the Declaration cannot be changed except with the approval of one hundred percent (100%) of the Owners or as provided in Section 12.6 ("Revision of Documents") following condemnation of a portion of the Project.
- 3.4 Limitation on Partition of Common Area. There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision of the Common Area. Notwithstanding any provision to the contrary contained in this Declaration and in order to provide for a means of terminating the Development if this should become necessary or desirable upon the occurrence of any of the conditions presently set forth in California *Civil Code* section 4610 or as such conditions in the future may be set forth in any amendment thereto or comparable provision of law, two-thirds (2/3) of the Owners of Lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under Government Code section 66499.21 and following, or any comparable provisions of law, and to vest title to the Common Area in the Owners as tenants in common and order an equitable partition of the Common Area in accordance with the laws of the State of California. If any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing contained in this Declaration shall be deemed to prevent a judicial partition by sale as between such co-tenants.
- 3.5 New Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of new capital improvements upon the Common Area (as distinguished from expenditures for the reconstruction or replacement of an existing capital improvement), provided that in any fiscal year expenditures for such new capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a Majority of a Quorum of the Members.
- 3.6 Sale or Mortgage of Association Real Property. Upon approval of a Majority of a Quorum of the Members, the Board acting on behalf of the Association shall

have the power and authority to sell, transfer, mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; provided, however, that such approval shall not be required in the case of the sale by the Association of a Lot acquired by the Association as the result of foreclosure of the Association's lien.

- 3.7 Sale or Transfer of Association Personal Property. The Board of Directors shall not in any fiscal year sell or transfer personal property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of a Majority of a Quorum of the Members.

ARTICLE 4 MECHANIC'S LIENS, EASEMENTS

- 4.1 Mechanic's Lien Against Common Area. In the event there shall be filed against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provisions of the Governing Documents concerning notice or hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.
- 4.2 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s), there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way as particularly identified in this Article 4.

- 4.3 Master Declaration. The Common Area and each Lot are subject to the easements and rights established by the Master Declaration.
- 4.4 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:
- (a) The right of the Board to establish and enforce Rules governing the use of the Common Area and facilities thereon;
 - (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
 - (c) The right of the Board, as set forth in Section 3.6 ("Sale or Mortgage of Association Real Property"), to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;
 - (d) The right of the Board, as set forth in Section 3.7 ("Sale or Transfer of Association Personal Property"), to sell or transfer personal property owned by the Association;
 - (e) The right of the Board, as set forth in Section 4.8 ("Utility Easements"), to grant and transfer utility easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
 - (f) The right of the Board, as set forth in Section 4.10 ("Board Power to Grant Easements and Licenses to Owners"), to grant easements, licenses, and rights of way upon the Common Area; and
 - (g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.
- 4.5 Easements of Encroachment and Drainage. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; *provided, however*, that in no event shall an easement for encroachment exist in favor of an Owner, a Resident, or the Association if such encroachment occurred

due to willful unauthorized conduct on the part of such person. In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner are hereby declared to have an easement for retaining walls, footings, roofs, balconies, eaves, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from such roofs, gutters, balconies, eaves, and all other encroachments over each such adjoining Lot and/or Common Area.

- 4.6 Storm Drains. There are reserved and granted for the benefit of each Lot and the Common Area, over, under, across and through the Development, except Dwellings, non-exclusive easements for surface and subsurface storm drains and the flow of water in accordance with natural drainage patterns and the drainage patterns and Improvements installed or constructed by Declarant, including, but not by way of limitation, subdrains which are within fifteen feet (15') of the surface of Lots 4, 53, 54, 99, 100 and 101, as shown on the Map. No Owner or Invitee may modify, relocate, or remove the subdrains on these Lots without the prior written consent of the City and the Architectural Committee. No alteration may be performed on these Lots that could in any manner interfere with the operation of the subdrains and before the commencement of any grading or excavation work on these Lots, the location of the subdrains shall be determined and marked on the surface so that the work will not disturb the subdrains. Additionally, this Declaration and each Lot and the Common Areas shall be subject to all easements granted by Declarant for the installation and maintenance of drainage improvements necessary for the development of the Development.
- 4.7 Golf Course Easements. The Common Area and Lots are subject to a non-exclusive easement appurtenant to the Golf Course for golf ball encroachment as more fully described in Section 12.9.2 of the Master Declaration. Any Common Area of Lot adjacent to (and therefore sloping toward) the Golf Course is also subject to a non-exclusive easement appurtenant to the Golf Course for those purposes set forth in Section 7.3 of the Master Declaration. The easements referenced in this Section are for the benefit of the owner of the Golf Course, its successors and assigns and for the benefit of their employees, contractors, agents, guests, invitees, licensees, or members (collectively referred to as "beneficiaries"). By acceptance of a deed to a Lot, each Owner (i) acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include the risk of damage to property or injury to persons and animals from golf balls, and (ii) assumes such risks, and releases Declarant, the owner of the Golf Course, the Association and its directors, officer and agents and the beneficiaries from any and all liability for

damage or injury caused by golf balls which intrude in, on, or around the Owner's Lot or Dwelling.

- 4.8 Utility Easements. There are reserved and there shall exist easements over and under the Development or any portion thereof for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, together with the right to grant and transfer the same and each purchaser, in accepting a deed to a Lot, expressly consents thereto; *provided, however*, that no such easement or right of way may be granted or transferred if it would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

4.9 Use Easements.

- 4.9.1 One Foot Use Easements. Each Lot which is designated on the Map as a Lot benefitted by a One (1) Foot Use Easement ("Dominant Tenement") shall have an exclusive right and easement appurtenant to the Dominant Tenement over and across such One Foot Use Easement for the purposes of permitting the Owner of the Dominant Tenement to use and landscape the One Foot Use Easement in any manner which is consistent with Section 9.3.4 "(Landscaping)". Notwithstanding the preceding sentence, the Owner of the Dominant Tenement shall not (i) place any dirt or fill against the Dwelling constructed on the Lot burdened by the One Foot Use Easement ("Servient Tenement"); (ii) place any structure or install any landscaping within the One Foot Use Easement which could materially interfere with maintenance of the Servient Tenement Dwelling by the Owner of the Servient Tenement; or (iii) alter the grade or drainage in any manner which could direct water towards or trap water against the Servient Tenement Dwelling. The Owner of the Servient Tenement shall have no right to enter upon or use the One Foot Use Easement except upon not less than seventy-two (72) hours' advance written notice to the Owner of the Dominant Tenement and then only for limited purposes of performing such work during daylight hours as may be necessary or advisable in connection with the maintenance, repair or replacement of the Servient Tenement Dwelling. The Owner of the Servient Tenement shall not be liable for any reasonable damage to landscaping or other Improvements situated on the One Foot Use Easement in violation of (ii), above. Each Owner of a Dominant

Tenement shall maintain all landscaping and other Improvements situated on the One Foot Use Easement and otherwise be responsible for the One Foot Use Easement.

- 4.9.2 Three Foot Use Easements. Each Lot which is designated on the Map as a Lot benefitted by a Three (3) Foot Use easement ("Dominant Tenement") shall have a right and easement appurtenant to the Dominant Tenement over and across such Three Foot Use Easement for the purposes of access for maintenance, repair, and replacement of the Dwelling constructed on the Dominant Tenement. The Owner of the Dominant Tenement shall not place any structure or install any landscaping within the Three Foot Use Easement or alter the grade or drainage in any manner; rather, use of the Three Foot Use Easement by the Owner of the Dominant Tenement is limited to access for maintenance, repair, and replacement of the Dominant Tenement Dwelling. The Owner of the Dominant Tenement shall have no right to enter upon or use the Three Foot Use Easement except upon not less than seventy-two (72) hours advance written notice to the Owner of the Servient Tenement and then only for limited purposes of performing such work during daylight hours as may be necessary or advisable in connection with the maintenance, repair, or replacement of the Dominant Tenement Dwelling.
- 4.9.3 Dispute Resolution. Any dispute concerning a Use Easement, or otherwise under the provisions of this Article 4, shall be subject to the alternative dispute resolution provisions in Section 14.18 ("Alternative Dispute Resolution Before Initiating Lawsuit").
- 4.10 Board Power to Grant Easements and Licenses to Owners. Notwithstanding any other provisions of the Governing Documents, the Board shall have the power in its discretion without approval vote of the Members to grant and convey licenses for use, rights of way, and nonexclusive easements in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association; *provided, however*, that approval of a majority of the Total Voting Power of the Association shall be required to grant an exclusive easement over Common Area to any Member, other than any grant or conveyance to a Member described in *Civil Code* section 4600(b).

ARTICLE 5 USE RESTRICTIONS

- 5.1 Use of Common Area Generally. All use of Common Area is subject to the Governing Documents. Subject to the provisions of the Governing Documents, the Common Area shall be held, maintained, and used to meet the common

interests of the Owners and the Residents, members of their household, tenants, and guests.

- 5.2 No Alteration of Common Area. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall (i) construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, (ii) make or create any excavation or fill upon the Common Area, (iii) change the natural or existing drainage of the Common Area, or (iv) plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 5.3 No Obstruction of Common Area. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. There shall be no obstruction of any part of the Common Area nor shall anything impair access to the Common Area. Each Owner shall avoid causing any damage to the Common Area.
- 5.4 No Smoking in Common Area. For the safety of the property and for the health, safety, and security of all Residents of the Development, no smoking of cigarettes, cigars, or any other tobacco product, marijuana, or illegal substance shall be permitted anywhere in the Common Area, whether indoors or outdoors. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar, or other tobacco product, marijuana, or illegal substance, and shall include smoke from any such activity drifting from the interior of a Lot to the Common Area.
- 5.5 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his or her household, tenants, Contract Purchasers, and guests, subject to the terms of the Governing Documents. It is the express purpose and intent of this Section 5.5 to limit the right of use and enjoyment of the Common Area amenities to Residents of the Development and their accompanied guests. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. Any rights of enjoyment that have been delegated by an Owner are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 5.6 Residential Use. Except to the extent permitted in Section 5.8 ("Restriction on Businesses"), Lots shall be occupied and used only for single family residential purposes in conformity with the requirements of applicable zoning laws or other state or local rules or regulations.
- 5.7 Number of Occupants. No Dwelling shall be permanently occupied by a number of Residents that is more than two (2) times the number of bedrooms, based on

the number of legal bedrooms contained in the Dwelling. In no event shall any Dwelling be occupied by more individuals than permitted by applicable zoning laws or other governmental regulations.

5.8 Restriction on Businesses.

5.8.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) professional, administrative, or clerical activity as may be permitted by applicable governmental ordinances without the requirement of a conditional use permit but only if such activity does not entail the presence of employees, patrons, clients, or vendors except on an infrequent basis; does not require storage of large amounts of bulky goods or inventory; there is no external evidence of such activity including but not limited to a significant increase in traffic within the Development; the activity complies with all applicable governmental ordinances; and the activity is merely incidental to the use of the Lot for residential purposes; and (ii) certain care facilities that, by law, cannot be prohibited within the Development.

5.8.2 Indemnification Regarding Business Activity. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within the Development, or whose tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restriction on business contained in this Section 5.8. Any amounts owed pursuant to this Section 5.8.2 may be assessed as a Reimbursement Assessment.

5.9 Compliance with Laws. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Dwelling and the Common Area.

5.10 Unlawful Conduct, Nuisances, Noise. No unlawful, noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done within the Development which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Resident of the Development, or which shall in any way interfere with Residents' use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Dwellings. Without limiting any of the foregoing, no

Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot that would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

- 5.11 Conditions Affecting Insurance. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. If any Owner or Resident, member of their household, tenant, invitee, or guest shall violate this Section 5.11, the Lot Owner shall be liable to the Association for any resulting increase in insurance premiums and any other damages, which may be assessed against the responsible Owner as a Reimbursement Assessment.
- 5.12 Requirement of Architectural Approval. As addressed in Article 7 ("Architectural Approval"), construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to prior architectural approval.
- 5.13 Drainage. No Owner shall make any alteration to the drainage patterns and facilities in the Development unless plans have been submitted and approved pursuant to Article 7 ("Architectural Approval") and by any public authority with jurisdiction over the alteration.
- 5.13.1 Notice Regarding Drainage. This Declaration provides notice to each Owner to devote great care and attention to grading and to establishing and maintaining positive drainage away from the entire foundation line of the Owner's Residence. Positive drainage is achieved by shaping Lot grades, establishing drainage "swales" or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side, and front of the Dwelling to offsite drainage disposal. Swales also prevent drainage water from moving across a Lot to another Lot or Common Area. This Declaration also provides notice to each Owner that if existing drainage swales established on the Lot and around the Dwelling are interrupted, blocked, filled, or otherwise altered, serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a Residence, foundation, garage floor, driveway or other improvement. Serious damage can result even during a short period of time.
- 5.13.2 Roof Gutter System and Downspouts. If a Dwelling has a roof gutter system and downspouts which are directly connected to the Development's storm drainage system, the Dwelling shall remain connected to the Development storm drainage system at all times. The Owner of such a Dwelling may not alter the Dwelling in any

manner which results in additional roof waters draining anywhere other than directly into the Development's storm drainage system.

5.14 Animals.

- 5.14.1 No Commercial Purposes. No animals shall be kept, bred, or maintained within the Development for any commercial purpose.
- 5.14.2 Number of Pets. Not more than a total of two (2) dogs, cats, or birds (for example, two dogs, or a dog and a cat, or a dog and a bird, or two birds) and a reasonable number of fish in an aquarium may be kept on each Lot.
- 5.14.3 Control of Pets. While in Common Areas and outside the Dwelling each dog must be restrained on a leash held by a responsible person capable of controlling the dog. Any Owner or Resident may cause any unleashed dog within the Common Area to be removed to a pound or animal shelter under the jurisdiction of the City of Vallejo or the County of Solano.
- 5.14.4 No Outside Structures for Animals. No animal cages, dog houses, dog runs, or other devices or structures for the care, housing, or confinement of any animal visible from Common Area or another Lot shall be permitted on any Lot, unless approved by the Master Architectural Committee and the Architectural Committee.
- 5.14.5 No Outside Feeding of Animals. There shall be no feeding of ducks, geese, deer, or any other non-domesticated animals within the Development. In order to control feral cats, raccoons, vermin, and other stray animals within the Development, no animal food shall be kept or placed outside anywhere within the Development, except for approved bird feeders. Pet feeding stations may not be kept in a garage if the garage door is left open permitting animals to access the feeding station.
- 5.14.6 Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Owners, their tenants, and guests shall prevent their pets from soiling any portion of the Common Area and shall immediately clean up any mess left by their pet.
- 5.14.7 Indemnification Regarding Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or

her household, tenants, invitees, or guests. To the fullest extent permitted by law, each Owner agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, tenants, invitees, or guests including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents, including but not limited to the restrictions on animals contained in this Section 5.14. Any amounts owed pursuant to this Section 5.14.7 may be assessed as a Reimbursement Assessment.

- 5.14.8 Removal of Nuisance Pets. The Association shall have the right to prohibit the keeping of any animal which, after the responsible Owner or Resident has an opportunity for a hearing called by the Board pursuant to Section 14.13 ("Hearing Called by the Board; Executive Session; Open Meeting"), is found by the Board to be a nuisance.
- 5.14.9 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 5.14.
- 5.15 Trash Disposal. Trash, garbage, accumulated waste plant material, other waste and refuse, and recyclable waste shall be deposited only in containers provided for that purpose by the garbage collection service. Such containers shall be located in an appropriate area upon each Lot and concealed from view. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Lot or elsewhere in the Development, except in such containers. Furniture, appliances, water heaters, construction or remodeling debris and other bulky items must be properly disposed of off-site by the Owner or Resident at his or her sole expense and shall not be placed in Association waste containers.
- 5.16 Signs, Banners, Flags. Only the following types of signs, posters, banners, or flags shall be displayed to the public view from any portion of the Development:
- (a) Signs required by legal proceedings;
 - (b) A noncommercial sign or poster no larger than nine (9) square feet in size or a noncommercial flag or banner no larger than fifteen (15) square feet in size, displayed upon a Lot or Dwelling, and limited to the fullest extent permitted by *Civil Code* section 4710;

- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and the Architectural Rules, if any, and reasonably located on a Lot advertising a Lot for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States, subject to any city or county restrictions as to size and as to time, place, and manner of display, as provided in *Civil Code* section 4705;
- (f) A single identification sign which has been approved by the Board or the Architectural Committee (if any) located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (g) Signs approved by the Board as required for traffic control and regulation of streets or open areas within the Development; and
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, including signs located at or near any entrance to the Development identifying the Development.

5.17 Vehicles and Parking.

- 5.17.1 Oversized Vehicles. No vehicle that is too large to be parked entirely within a garage or entirely within a driveway (including but not limited to trailers, campers, mobile homes, and commercial vehicles and trucks) shall be permitted to remain anywhere within the Development, except that (i) such vehicle may be parked temporarily on the street where street parking is authorized (not to exceed 4 hours) for purposes of loading or unloading, provided such vehicle does not interfere with the safe ingress and egress of pedestrians and vehicular traffic within the Development and (ii) oversized vehicles may be parked in designated areas of the Development in accordance with prior Board approval.
- 5.17.2 Commercial Vehicles. Commercial vehicles of vendors, utilities, contractors, and others providing services shall be permitted within the Development while services are actually being performed and shall not be parked within the Development overnight. Commercial vehicles driven by Residents must be parked within the Garage or driveway assigned to the Lot. Oversized commercial vehicles are subject to the provisions of Section 5.17.1.
- 5.17.3 Prohibited Vehicles. Prohibited Vehicles may not be brought into the Development. The following types of vehicles are Prohibited Vehicles:

(i) dilapidated or inoperable vehicles; (ii) unreasonably noisy vehicles, vehicles that emit foul-smelling or offensive exhaust fumes; (iii) unregistered vehicles; and (iv) mobile homes.

5.17.4 Restricted Vehicles. Restricted Vehicles shall not be kept or parked anywhere within the Development except entirely inside a Garage, wholly within a driveway, or, subject to Section 5.17.5 ("Parking"), where authorized upon the private streets. The following types of vehicles are Restricted Vehicles: (i) campers, motor homes, recreational vehicles; (ii) trailers; (iii) boats; (iv) golf carts or similar equipment; and (v) commercial vehicles. The term "commercial vehicle" shall not include any two-axle passenger vehicle or pickup truck that is used by a Resident both for business and for daily personal transportation, provided that any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board (for example and not by way of limitation, commercial information on a license plate holder or a dealership decal or nameplate on a vehicle would be considered "unobtrusive") and such vehicles shall be considered passenger vehicles. Restricted vehicles shall not be kept or parked within the Development other than inside a Garage or wholly within a driveway, except that they may be parked temporarily in the street in front of a Lot where authorized for up to seventy-two (72) hours for purposes of loading or unloading only.

5.17.5 Parking.

- (a) Generally: Vehicles shall not be parked anywhere in the Development except wholly within garages or driveways, and when authorized upon the private streets (excepting Bromley Court, the portion of Nottingham Court shown on the Map at Exhibit A as Parcel C and the portion of Summer Gate Avenue shown on the Map as Parcel I.
- (b) Master Declaration: All parking is subject to the provisions of Sections 3.1.10 and 3.1.11 of the Master Declaration.
- (c) Owner/Resident Parking: Each Owner or Resident shall park his or her vehicle in the garage. No Owner or Resident within the Development may park on the private streets at any time, except when visiting another Owner or Resident, and except for temporary loading and unloading as stated in Section 5.17.4 ("Restricted Vehicles"), above. Each Owner or Resident may park within his or her driveway, subject to any restrictions in the Master Declaration or the Parking Rules. Tandem parking in

driveways is allowed, as long as all vehicles are wholly within the driveway and do not block the sidewalk.

- (d) Garage: Each garage shall be used for parking the vehicles of the Residents of the Dwelling and shall not be used for any other purpose that interferes with the ability to park the number of vehicles the garage was designed to accommodate unless the number of vehicles of all Residents of the Dwelling is less than the number the garage was designed to accommodate.
- (e) Guest Parking: Street parking on the private streets is reserved for guests and invitees only. Guests may also park in driveways and garages with the Lot Owner's or Resident's permission. Owners or Residents visiting other Owners or Residents are Guests for parking purposes.
- (f) Safety: Parking is not allowed at any time in designated fire lanes. No vehicle shall be parked continuously in the street for longer than seventy-two (72) hours. At no time may a vehicle block a sidewalk.
- (g) Rules: The Board may adopt Parking Rules to control parking in the Development. The Parking Rules may include a permit or other system regarding Resident, visitor and guest parking.

5.17.6 Vehicle Repairs. No motor vehicles or boats shall be constructed, reconstructed, or repaired within the Development (other than minor emergency repairs to the extent necessary to move the vehicle to a repair facility).

5.17.7 Parking Enforcement and Towing. The provisions of this Section 5.17 apply to all vehicles within the Development, including vehicles of guests and invitees. In addition to the provisions of this Section 5.17, the Board shall have the power and authority to adopt, promulgate, and enforce Parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Subject to the provisions of applicable law, including Vehicle Code section 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Owner responsible or whose household member, Contract

Purchaser, tenant, invitee, or guest is responsible for the presence of such vehicle.

5.18 Garages and Garage Doors. Garages are to serve as the primary parking facility. No part of any garage shall be converted to another use without the approval of the Board. Each garage door shall remain closed except during ingress or egress or when necessary to provide ventilation for individuals working in the garage area.

5.19 Golf Course.

5.19.1 Golf Course Appearance. Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel the owner of the Golf Course to maintain the Golf Course or any improvements thereon to any particular standard of care and that the appearance of the Golf Course and improvements shall be determined in the sole discretion of the owner of the Golf Course. One (1) or more lakes may be constructed on the Golf Course. The levels of Golf Course lakes will fluctuate to accommodate irrigation of the Golf Course. There is no assurance that the Golf Course lakes will be maintained at any particular level.

5.19.2 Dwellings Adjacent to Golf Course. By acceptance of a deed to a Lot, each Owner acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portion of the Development used by the Owner, (b) the entry by golfer's onto Owner's Lot or other portions of the Development used by the Owner to retrieve golf balls, (c) overspray in connection with the watering of the roughs, fairways, and greens on the Golf Course, (d) noise from golf course maintenance and operation equipment, including, by way of example only and without limitation, compressors, blowers, mulchers, tractors, utility vehicles, and pumps, all of which may be operated at all times of the day and night and/or continuously, (e) odors arising from irrigation and fertilization of the turf situated on the Golf Course, (f) disturbance and loss of privacy resulting from golf cart traffic and golfers, and (g) those detriments described in Section 12.9 of the Master Declaration. Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated waste water, or other sources of non-potable water may be used for irrigation of the Golf Course. Each Owner expressly assumes such detriments and risks and agrees that neither the owner or manager of the Golf Course, the Association, nor any of their successors or assigns shall be liable to the Owner or anyone claiming any loss or

damage, including without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, arising from or otherwise related to the proximity of the Owner's Lot or Dwelling to the Golf Course, including, without limitation, any claim arising in whole or in part from the negligence of the manager or owner of the Golf Course, the Association, or their successors or assigns. Each Owner hereby agrees to indemnify and hold harmless the Association and the owner and manager of the Golf Course, and their successors and assigns, against any and all such claims by Owner's Invitees.

ARTICLE 6 RENTING OR LEASING

6.1 Requirements for Renting.

6.1.1 Written Lease. An Owner renting his or her Lot shall do so pursuant to a written lease or rental agreement. The lease or rental agreement shall expressly provide:

- (i) for an initial term of at least thirty (30) days;
- (ii) that its terms are subject to all of the provisions of the Governing Documents;
- (iii) that failure of the tenant, members of the tenant's household, invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a default under the terms of such lease or rental agreement; and
- (iv) that in the event of any such default, the Association shall be entitled to maintain an eviction action against the tenant to the same extent as the Owner of the Lot, the Association being deemed to be a third party beneficiary under such lease or rental agreement, as provided in Section 6.6 ("Association as Third Party Beneficiary").

6.1.2 No Subletting. No subletting shall be permitted.

6.1.3 Copy of Lease. Upon request by the Association, an Owner renting his or her Lot shall file a copy of the signed lease or rental agreement with the Board.

- 6.1.4 Renter's Insurance. An Owner renting his or her Lot shall require the tenant to carry renter's insurance, as provided in Section 11.6 ("HO4 Renter's Policy").
- 6.1.5 Provide Governing Documents to Tenants. An Owner renting his or her Lot shall provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto.
- 6.1.6 Affidavit of Tenants. Upon request by the Association, the Owner shall cause all tenants and occupants to execute and submit to the Association an affidavit or certificate in a form prescribed by the Association, which includes the following and such other matters as are reasonably required by the Association: (i) that he/she/they understand; (ii) that he/she/they have received copies of the Governing Documents; (iii) that he/she/they understand that the lease is expressly subject to all the provisions of the Governing Documents; (iv) that he/she/they understand that the breach of any provision of the Governing Documents shall constitute a default under the lease; and (v) contact information for the tenants and occupants, including telephone number, email address, and vehicle information for all vehicles parked at the Development.
- 6.1.7 "House Sitters". The provisions of Section 6.1.5 ("Provide Governing Documents to Tenants") and Section 6.1.6 ("Affidavit of Tenants") shall apply with respect to any person occupying a Lot as a guest of the Owner, as a paid or unpaid "house sitter," or in a similar capacity when no Owner is in residence.
- 6.1.8 Owner's Contact Information. An Owner renting his or her Lot shall provide the Association with contact information for the Owner or a representative of the Owner with authority to act on behalf of the Owner with respect to the Lot and the tenants, including telephone number, email address, mailing address, and such other contact information as the Association may require.
- 6.2 No Transient Rentals. No Owner shall be permitted to lease, rent, or otherwise operate his or her Lot for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental (even if the term is longer than thirty days) where the occupant of a Dwelling is provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen and towels, laundry service, or bellboy services.
- 6.3 Rental of Entire Lot. No Owner shall rent or lease less than the entire Lot. The preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No garage, accessory building, or

other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the principal building on the Lot. This Section 6.3 is not intended to prohibit a resident Owner from sharing his or her Lot or Dwelling with a roommate or other person(s) with whom the Owner maintains a common household.

- 6.4 No Time Share Arrangements. No Lot or Lots or any portion thereof shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," any other membership or time interval ownership arrangement, or any time-share estate or time-share use as defined in Section 11003.5 of the *Business and Professions Code*. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots or any portion thereof or Dwelling thereon rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This Section 6.4 shall not be construed to limit the personal use of any Lot or any portion thereof by its Owner and such Owner's social or familial guests.
- 6.5 Implementation. Upon request from the Board, each Owner then renting or leasing a Lot shall provide to the Board such information as the Board may reasonably require in order to implement the provisions of this Article 6 including but not limited to the names of the tenants and the members of the tenants' household and the duration of the lease and/or a copy of the signed lease. Any rental or leasing of a Lot commencing after this Declaration is recorded and the renewal of a tenancy in effect on the date this Declaration is recorded shall be pursuant to a written lease or rental agreement in accordance with Section 6.1 ("Requirements for Renting").
- 6.6 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 6.1 ("Requirements for Renting") and, whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Lot subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, tenant's invitees, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to the rights granted pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"), or under the law. The power of the Association as provided in this Section 6.6 shall

be exercised in good faith, in a reasonable and nondiscriminatory manner, and only after notice and opportunity for a hearing as provided in Article 14 ("Enforcement; Notice, Hearings").

- 6.7 Indemnification Regarding Tenant's Actions. Each Owner leasing or renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Dwellings, Lots, and Common Area and for each tenant's compliance with the provisions of the Governing Documents. No provision of any lease or rental agreement shall relieve the Lot Owner of his or her obligations pursuant to the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from and against any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of the occupants of the Lot upon the Development, including but not limited to attorneys' fees (including attorneys' fees incurred to enforce the provisions of this Article 6 against the Owner of the Lot or any guest, tenant or other occupant of the Lot), any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Documents with respect to such occupants. Any amounts owed pursuant to this Section 6.7 may be assessed as a Reimbursement Assessment against the responsible Owner and his or her Lot.

ARTICLE 7 ARCHITECTURAL APPROVAL

- 7.1 Prior Architectural Approval Required. No building, fence, hedge or similar barrier, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind, no outdoor lighting, no mast, pole, tower, antenna, receiver, or transmitter to the extent restricted by Section 7.3.11 ("Satellite Dishes and Antennas"), and no landscaping shall be commenced, erected, painted, or installed within the Development, nor shall any exterior addition or change or alteration be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Architectural Committee. The requirement of architectural approval shall not apply to improvements made or constructed by or on behalf of the Association.
- 7.2 Master Declaration Architectural Committee Approvals. Proposals for architectural approval may also be subject to review and approval by the Architectural Committee established by the Master Declaration. Satisfying the provisions of this Article 7 does not automatically satisfy the Master Declaration Architectural Committee. All approvals by the Master Declaration Architectural Committee are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Article 7.

7.3 Some Common Architectural Concerns. This Section 7.3 enumerates some common areas of architectural concern. These are examples only and do not represent an exhaustive list of changes that require prior architectural approval. Nothing in this Section 7.3 shall be deemed to limit the generality of Section 7.1 ("Prior Architectural Approval Required") or Section 7.2 ("Master Declaration Committee Approvals").

7.3.1 Generally. Alterations may be made to the interior of an Owner's Dwelling, if the alterations do not impair the structural integrity of the Dwelling and if the Owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for alterations on Lots or to the exteriors of Dwellings shall be made in accordance with the provisions of this Article 7.

7.3.2 Non-Buildable Setback Area. All Lots, except Lots 33, 35, 40, 63, 73, 89, 90, and 101, have at least one (1) sideyard which is less than five feet (5') in width ("Minimal Sideyard"). The Dwellings constructed on these Lots may not be further expanded into the Minimal Sideyard (in addition exterior additions are prohibited in accordance with Section 7.3.3 ("Exterior Additions Prohibited"), below). No construction, development, grading (except minor "finish" grading for landscape purposes), fencing, or decking over three feet (3') in height (measured from the ground and including the railings or benches within the measurement) may be constructed within any Minimal Sideyard, except as may be expressly permitted by the City. Any Owner who desires to develop any improvement within a Minimal Sideyard which requires the approval of the City shall submit to the City Planning Department or City Council a written proposal describing the nature, extent, and location of such improvement. The City shall have sixty (60) days from receipt of such proposal in which to approve or disapprove the proposal. The failure by the City to approve or disapprove the proposal within said time shall be conclusively deemed to be approval of such proposal. This restriction is enforceable by the Association, the Owners, and the City, as an intended third party beneficiary of this restriction.

7.3.3 Exterior Additions Prohibited. No exterior additions to Dwellings are permitted. Small decks and patios and other similar improvements may be constructed if approved by the City and in accordance with this Article 7.

7.3.4 Exterior Painting. Prior architectural approval shall not be required for repainting or refinishing a structure in its existing color scheme, like for like, if such colors have been previously approved.

- 7.3.5 Exterior Lighting. No Owner shall remove, damage, or disable any exterior light, regardless of where located, without prior approval from the Association. No Owner may install additional lighting on the exteriors of Dwellings or modify any lighting installed on the exterior of Dwellings without first obtaining approval in accordance with this Article 7. Any exterior electrical, gas, or other artificial lighting installed on any Lot, including swimming pool lighting, shall be subject to the approval of the Architectural Committee and shall be of such controlled focus and intensity so as not to unreasonably disturb the Residents of any other Lot.
- 7.3.6 Sports Apparatus. No basketball standards (including so-called portable basketball standards), fixed sports apparatus, or similar equipment shall be placed upon or attached to any Lot or building without prior written approval of the Architectural Committee in accordance with this Article 7. Portable or movable basketball equipment, trampolines, or other movable sports apparatus may not remain overnight on any Lot where visible from adjacent Lots or streets without the prior approval of the Board.
- 7.3.7 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained on any Lot unless such facilities are completely concealed so as not to be seen from any adjacent property.
- 7.3.8 Outdoor Furniture. Only furniture and accessories designed for outdoor use shall be placed or kept outdoors on any Lot.
- 7.3.9 Drainage Patterns. No excavation and no alteration or addition of any kind is permitted which alters or may alter existing drainage patterns of existing channels upon, under, and/or across the Development property or any portion thereof through which water in time of storms or otherwise naturally flows or through which water has been caused to flow artificially, without obtaining prior architectural approval.
- 7.3.10 No Installations on Roof. Absolutely no installation of any kind, including but not limited to skylights, antennas, or air conditioning equipment, shall be placed or installed upon any roof without obtaining prior architectural approval.
- 7.3.11 Satellite Dishes and Antennas. No outside radio or television aerial, antenna, dish, wire, or other receiving or transmitting device shall be erected, constructed, or maintained on any Lot, except (i) those expressly approved by the Board or the Architectural Committee or (ii) those that, by law, cannot be prohibited. It is the intention of this Section 7.3.11 to restrict outside radio or television aerials, antennas,

dishes, wires, and other receiving or transmitting devices in the Development to the fullest extent permitted by law and to authorize the Board to adopt and implement Rules regarding the same.

- 7.3.12 Masts, Poles, Towers, Other Projections. No outside mast, pole, tower, or projection of any type attached to any structure that extends above the roof of the structure (with the exception of chimneys and vent stacks) and no outside mast or pole shall be placed or permitted to remain without prior architectural approval.
- 7.3.13 Air Conditioner Units. Prior architectural approval is required for any exterior installation of an air conditioner, including installation in a window or door.
- 7.3.14 Storage Units, Temporary Structures. No shed, tent, temporary structure, cargo container, temporary storage container ("PODS") shall be erected, maintained, kept, or used anywhere within the Development without the prior architectural approval pursuant to this Article 7. Any approved temporary building shall be used only for purposes incidental to approved construction and shall be removed promptly upon completion of the work.
- 7.3.15 Solar Energy Systems. Solar energy systems as defined in *Civil Code* section 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to this Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.
- 7.3.16 Trees. All trees, hedges, and other plant materials shall be trimmed by the Owner of the Lot upon which they are located so that they shall not extend beyond the property line of any Lot. No trees, hedges, or other plant materials shall be so located or allowed to reach a size or height which will interfere with a primary view from any Lot.
- 7.3.17 Slope Maintenance. Each Owner shall keep, maintain, water, plant, and replant all slope banks located on his or her Lot (other than banks located within any area subject to a landscape easement area in favor of the Golf Course, the City of Vallejo, or the Hiddenbrooke Maintenance District) so as to prevent erosion and to create an attractive appearance. No structure, planting, or other material shall be placed or permitted to remain or other activities undertaken on any of said slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels, if any, or obstruct or retard the flow of water through drainage channels, if any.

7.4 Architectural Rules.

7.4.1 In General. Subject to the requirements of *Civil Code* section 4340 and following, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards for architectural review and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development and may include restrictions on satellite dishes and solar energy systems consistent with applicable law; *provided, however*, that Architectural Rules shall not be in derogation of any minimum standards required by this Declaration.

7.4.2 Roofs. Any Architectural Rules concerning the installation or repair of a roof shall comply with applicable law including *Civil Code* section 4720, if it applies.

7.4.3 Solar Energy Systems. Pursuant to *Civil Code* section 714 and *Civil Code* section 714.1, reasonable restrictions on solar energy systems are permitted provided they do not significantly increase the cost of the system or significantly decrease the efficiency or specified performance, and they allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. Such Rules may restrict installation in Common Areas and may require that the Association be indemnified for loss or damage caused by installation, maintenance, or use of solar energy systems. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.

7.5 Establishment and Composition of Architectural Committee. The Board shall appoint an Architectural Committee consisting of three (3) Members of the Association at least one of whom may be a Director. The Committee members shall serve at the pleasure of the Board. If at any time there shall not be a duly-constituted Architectural Committee, the Board shall exercise the functions of the Architectural Committee in accordance with the terms of this Article 7.

7.6 Duties and Authority of Architectural Committee. It shall be the duty of the Committee to consider and act upon proposals or plans submitted to it pursuant to the terms of this Declaration and to perform such other duties as may be delegated to it by the Board. The Committee is expressly not authorized to approve any variances from the Rules.

7.7 Meetings, Minutes, Reimbursement. The Committee shall meet as necessary to properly perform its duties hereunder. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Committee

and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Committee function.

- 7.8 Written Request for Committee Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 7, shall submit to the Committee a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Committee may require depending on the nature and size of the proposed work. Such information and documentation may include but is not limited to: (i) floor plans; (ii) color samples of exterior materials; (iii) specifications; (iv) building plans; (v) wall sections; (vi) exterior elevations; (vii) roof plans; (viii) landscaping plans; (ix) graphics and exterior furnishings; and (x) the Owner's proposed construction schedule.
- 7.9 Fees; Professional Consultants. The Committee may charge a reasonable fee or fees for review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.
- 7.10 Meetings. An Owner's request for approval shall be considered by the Committee at a Committee meeting. The Owner and, in the Committee's discretion, other interested persons, may present information relevant to the requested approval.
- 7.11 Basis for Decisions; Good Faith. The Committee's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Committee will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Committee shall make its decisions from the perspective of the interest of the Development as a whole in the fostering of the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of such factors the Committee reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Committee. The vote or written consent of a majority of the Committee members shall constitute an act by the Committee. The Committee shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
 - (b) The Committee finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Committee. The Committee shall disapprove any application involving a request for or a need for a variance;
 - (c) The Committee finds that the proposed work will, if approved, be consistent and compatible with the architectural and aesthetic standards

prevailing within the Development and will be in harmony with the external design and appearance of other existing structures and improvements within the Development, and as to location with respect to topography and finished grade elevations; and

- (d) The Committee determines that the proposed work would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship and materials.

7.12 Decisions In Writing; Timely Decision; Reasonable Conditions. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Committee within forty-five (45) days from the date of submission of a complete application to the Committee. Any approval may include such reasonable conditions as the Committee or the Board may determine. If a request is rejected, the decision shall include an explanation of the Committee's decision and a notice describing the Owner's right to request consideration by the Board.

7.13 Disapproval by Committee Due to Variance Issue. An application that has been disapproved by the Committee due to a variance issue [as provided in clause (b) of Section 7.11 ("Basis for Decisions; Good Faith")] may be re-submitted to the Board by the Owner or upon the Owner's request may be referred by the Committee to the Board. The Board, but not the Architectural Committee, may, but is not obligated to, grant variances or adjustments in its discretion if necessary to overcome practical difficulties due to topography or other conditions unique to a particular Lot, avoid unnecessary expense, or prevent unnecessary hardship in the application of the provisions of the Declaration; *provided, however,* that such variance or adjustment does not violate the purpose or purposes intended to be served by the standard or criteria being waived in each instance and is in conformity with the intent and purposes of the Declaration and *provided, further,* that no such variance shall constitute a waiver of such provision with respect to any future application whether for the same Lot or any other Lot. Any variance granted by the Board shall be noted in the written approval of the proposed work and may be required by the Board to be recorded in the County records.

7.14 Consideration by Board. If the Committee rejects a request for approval, the Owner shall be entitled to consideration of the request by the Board of Directors at an open meeting, pursuant to the procedures set forth in Section 14.14 ("Owner Request for Hearing").

7.15 Failure of Committee or Board to Make Timely Decision. If the Committee shall fail to act on a request for approval within the time specified in Section 7.12 ("Decisions in Writing; Timely Decision; Reasonable Conditions"), or if the Board shall fail to consider the Owner's request in a timely fashion pursuant to Section 7.14, ("Consideration by Board"), the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 5910, discussed in Section

14.17 ("Internal Dispute Resolution"); *except that* in the case of an application for installation or use of a solar energy system subject to *Civil Code* section 714, any application that is not denied by the Board within sixty (60) days from receipt of a complete application shall be deemed approved; nevertheless, as provided in Section 7.3.15 ("Solar Energy Systems"), nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area.

- 7.16 Failure to Obtain Required Approval. If any work that requires prior approval pursuant to this Article 7 is performed without such approval having been obtained, the Board shall be entitled to proceed in accordance with the provisions of Section 7.20 ("Notice of Non-Conformity") and Section 7.21 ("Failure to Remedy Non-Conformity") as though the Board had given written notice of non-conformity with approved plans.
- 7.17 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions of the approval and diligently proceed with the commencement and completion of all approved work. Commencement of the approved work shall occur, in all cases, within ninety (90) days from the date of such approval. If the Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Committee, upon written request of the Owner made prior to the expiration of the time for commencement of the approved work, extends the time for such commencement. The Committee shall not grant an extension of time for commencement of the work if the Committee finds that there has been a material change in the circumstances upon which the original approval was granted.
- 7.18 Completion; Extension of Deadline. The Owner shall complete all approved work within one (1) year after commencement thereof; except that in the case of reconstruction after substantially total destruction of the improvements on a Lot, the construction or reconstruction shall be completed within eighteen (18) months after commencement thereof. In the case of projects under construction when this Declaration is recorded, the construction or reconstruction shall be completed by the completion date specified in the project approval or, if no such completion date was specified, within one (1) year (or in the case of original construction on a vacant Lot or reconstruction after substantially total destruction of the improvements on a Lot within eighteen (18) months), after the date of recordation. The date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his or her agents, provided the Owner notifies the Committee of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 7.18, the Committee shall notify the Board of such failure, and the Board shall be entitled to (or on its own initiative the Board may) proceed in accordance

with the provisions of Section 7.20, ("Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.

- 7.19 Notice of Completion; Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 7, the Owner shall give written notice of completion to the Committee. The written notice shall include copies of all applicable permits, job cards, and building permit inspections. Within sixty (60) days after receiving notice of completion from the Owner, the Committee or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval and Owner shall cooperate with the Committee to conduct such inspection. If the Committee fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval. If the Owner fails to give notice of completion, the Board shall be entitled to proceed in accordance with the provisions of Section 7.20, ("Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.
- 7.20 Notice of Non-Conformity. If the Committee finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period set forth in Section 7.19 ("Notice of Completion; Inspection of Completed Work") specifying particulars of non-conformity and requiring the Owner to remedy the same within thirty (30) days from the date of the notice from the Committee or such longer time as the Committee may designate in the notice.
- 7.21 Failure to Remedy Non-Conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice of non-conformity from the Committee, the Committee shall notify the Board in writing of such failure. Pursuant to the procedures set forth in Section 14.13 ("Hearings Called by the Board; Executive Session; Open Meeting"), the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, order the Owner to remedy or remove such non-conformity. If the Owner thereafter fails to do so within the time specified by the Board, the Board may, in addition to any other remedy available under the Governing Documents or applicable law, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.
- 7.22 Non-Waiver. The approval by the Committee or the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring approval under this Article 7, shall not be deemed to constitute a waiver of the right to withhold approval of any similar plan, drawing, specification,

or matter subsequently submitted for approval with respect to the same Lot or any other Lot.

7.23 Disclaimer of Liability. Neither the Board, nor any Committee, nor any member thereof shall be liable to the Association, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development of any property within the Development; *provided, however*, that the Board, Committee, or such member has acted in good faith on the basis of such information as may be possessed by it or him or her. Without limiting the generality of the foregoing, the Board or any Committee may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted for approval pursuant to this Article 7. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, the Committee, or its or their members seeking to recover any such damages.

7.24 Compliance With Governmental Requirements. The Owner of the Lot is required to obtain all permits and governmental authorizations, if any, required for any work done upon such Owner's Lot and such Owner must comply with all applicable zoning and building codes as well as other applicable laws and ordinances. The Owner of each Lot is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Owner's Lot. Submission of a request for approval by the Committee or the Board and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, nor shall it constitute the assumption of any responsibility by or impose any liability on the Association, the Board, the Committee, or its or their members as to the accuracy, efficacy, or sufficiency thereof. When Architectural approval standards of the Association are more stringent than applicable governmental standards, the more stringent standards of the Association shall apply, notwithstanding the fact that governmental approval may have been obtained based on governmental standards that are less stringent than those of the Association.

ARTICLE 8 ASSESSMENTS AND LIENS

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

Assessments, (iii) Reimbursement Assessments; and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

- 8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.
- 8.1.2 Assessments Are a Personal Obligation. Assessments levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.
- 8.1.3 Obligation Runs with the Land. The obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed that become due and payable during the time he or she is Owner of such Lot.
- 8.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Lot, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. No assumption of personal liability by a successor Owner shall relieve any Owner from personal liability for delinquent Assessments. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder.
- 8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.
- 8.2.1 Lien is Continuing. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot

notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a notice of delinquent assessment has been recorded as provided in the Declaration and by law.

- 8.2.2 Priority of Association's Assessment Liens. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing Assessments and Additional Charges on such Lot that become due and payable subsequent to the lien being foreclosed upon.
- 8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance, repair, and replacement of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Owners, or for the enforcement of the Governing Documents.
- 8.4 Funds to Be Held in Association's Name. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated Village at Hiddenbrooke Operating Account and Village at Hiddenbrooke Reserve Account. The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.4 of the Bylaws ("Checks, Drafts, and Evidences of Indebtedness").
- 8.5 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 8.6 Authority of the Board to Levy Assessments. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

8.7 Regular Assessment.

- 8.7.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with the Governing Documents, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Regular Assessment.
- 8.7.2 Allocation of Regular Assessment. The Board shall allocate and assess the Regular Assessment equally among the Lots by dividing the amount by the number of Lots within the Development.
- 8.7.3 Payment of Regular Assessment. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.
- 8.7.4 Notice of Regular Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Regular Assessment allocated to his or her Lot, except that if there is an increase in the Regular Assessment over the previous year, in compliance with *Civil Code* section 5615 the notice shall be provided in accordance with *Civil Code* section 4040 to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Regular Assessment.
- 8.7.5 Permitted Increase in Regular Assessment. Pursuant to *Civil Code* section 5605(b), except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

8.7.6 Revised Regular Assessment. Subject to the provisions of Section 8.7.5 ("Permitted Increase in Regular Assessment") or as otherwise permitted by law, if at any time during the course of any year, the Board determines the amount of the Regular Assessment to be inadequate, by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting of the Board, to revise the Regular Assessment for the balance of the fiscal year. To the extent required by *Civil Code* section 5615, notice of any such increase shall be given to the Members in accordance with *Civil Code* section 4040 and such revised Regular Assessment shall become effective on the first day of the next month that is at least thirty (30) days and not more than sixty (60) days after the date of such notice.

8.7.7 Failure to Fix Regular Assessment. The failure or omission by the Board to fix or levy any Regular Assessment before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

8.8 Special Assessments.

8.8.1 Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.8.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 5605(c), a quorum shall mean more than fifty percent (50%) of the

Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

- 8.8.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Regular Assessments, except as provided in Section 8.8 that a Special Assessment for the purpose of repairing, restoring, or reconstructing the Common Area after Major Damage shall be allocated based on the square footage, as provided in Section 12.3.3 ("Insufficient Insurance Proceeds").
- 8.8.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 5615 notice thereof shall be given to each Owner in accordance with *Civil Code* section 4040, not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.
- 8.8.5 Payment of Special Assessments; Cost of Payment Plans. Special Assessments shall be payable in a lump sum or in installments as may be determined by the Board with regard to each Special Assessment when it is imposed. If the Association incurs additional expenses because of a payment method selected by an Owner (for example, but not limited to, paying a Special Assessment in installments instead of in a lump sum), the Association may charge such expense to the Owner as an Additional Charge or as a Reimbursement Assessment. Nothing in this Section 8.8 shall be deemed to obligate the Association to offer or permit alternate payment plans.
- 8.9 Application of Surplus Funds (IRS Resolution). If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code section 277 for the year ended, the Board shall determine, without the need for a Member vote, whether such excess shall be applied to reserves and deposited in the Association's Reserve Account or shall be applied against the subsequent tax year's Member Assessments as provided in Internal Revenue Service Revenue Ruling 70-604. If the Board does not determine to so apply such excess membership income to reserves or to the subsequent year's Member Assessments, any other lawful disposition of such excess income shall be as determined by the vote of the Members.
- 8.10 Reimbursement Assessments. The Board, after notice and a hearing as provided for in Section 14.12 ("Notices: Content, Delivery") and Section 14.13 ("Hearing Called by the Board; Executive Session; Open Meeting"), may levy a Reimbursement Assessment against an Owner and his or her Lot:

- (a) To reimburse the Association for costs incurred to maintain, repair, or replace property (including property within a Lot) when such damage is due to the act or neglect of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest, or as otherwise provided in the Governing Documents;
- (b) If the failure of such Owner, his or her Contract Purchaser, or member of his or her household, pet, tenant, invitee, or guest to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such person or the Lot into compliance;
- (c) To reimburse the Association for any costs of collecting from an Owner any amount the Owner is obligated to pay the Association.

Without limiting the generality of the foregoing, and to the fullest extent permitted by law, all costs including attorneys' fees, incurred by the Association to enforce Section 5.8 ("Restriction on Businesses"), Section 5.14 ("Animals"), Section 6.6 ("Association As Third Party Beneficiary"), Section 6.7 ("Indemnification Regarding Tenant's Actions"), Section 8.18 ("Assignment of Rents as Security for Payment"), and Section 14.7 ("Injunctions"), or to defend any claim arising or alleged to arise from any of the foregoing sections, shall be reimbursed to the Association as a Reimbursement Assessment. Any Reimbursement Assessment shall be due and payable to the Association when levied.

- 8.11 Enforcement Assessments. Subject to the requirements set forth in Section 14.9 ("Imposing Sanctions"), the Board may levy an Enforcement Assessment (and any fine or monetary penalty imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 8.12 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 8.13 Bad Checks. An Owner who writes a check to the Association on insufficient funds shall be charged a service fee in the amount permitted by *Civil Code* section 1719 and may be liable for damages to the Association in an amount equal to three (3) times the amount of the bad check, as provided by statute.

- 8.14 Delinquent Assessments; Acceleration in the Event of Delinquency. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 5650(b), shall be subject to a late charge and, thirty (30) days after the due date, interest not to exceed the maximum rate permitted by law, as well as all other Additional Charges. If any monthly installment of the Regular Assessment or any installment of a Special Assessment that has been levied or is permitted to be paid on an installment basis is delinquent for a period of sixty (60) days, the Association may, but shall not be obligated to, declare the entire balance of the Regular Assessment or the Special Assessment immediately due and payable together with all other delinquent amounts.
- 8.15 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 5725(b), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 8.15.1 Pre-Lien Notice. At least thirty (30) days prior to recording a Notice of Delinquent Assessment against a Lot to collect a debt that is past due, the Association shall provide written notice to the Owner(s) of the Lot, as required by *Civil Code* section 5660 ("Pre-Lien Notice").
- 8.15.2 Prior to Recording a Lien. Prior to recording a Notice of Delinquent Assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in Internal Dispute Resolution (Section 14.17 of this Declaration) or Alternative Dispute Resolution Before Initiating Lawsuit (Section 14.18 of this Declaration) to the extent required pursuant to *Civil Code* section 5670 and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 5673.
- 8.15.3 Owner's Right To Discuss Payment Plan. To the extent provided in *Civil Code* section 5665, an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-Lien Notice. If the Owner's written request is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-Lien Notice, the Board shall meet with the Owner within forty-five (45) days of the postmark date of the Owner's written request, unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its

discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one or more Board members to meet with the Owner.

- 8.15.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-Lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. No later than ten (10) days after recordation, a copy of the Notice of Delinquent Assessment shall be mailed by certified mail in compliance with *Civil Code* section 5675 to every person whose name is shown as an Owner of the Lot in the Association records or in such manner and to such persons as may be required by applicable law.
- 8.15.5 Delinquent Assessments of Less than \$1,800. To the extent provided in *Civil Code* section 5720(b), delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court to the extent provided in *Civil Code* section 5720(b)(1) or recording a lien as provided in *Civil Code* section 5720(b)(2). Prior to recording such a lien the Association shall offer to participate in Internal Dispute Resolution (Section 14.17 of this Declaration) to the extent required by *Civil Code* section 5720(b)(2).
- 8.15.6 Initiating Foreclosure. As provided in *Civil Code* section 5700(a), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 8 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment. To the extent required pursuant to *Civil Code* section 5705(b), the Association shall offer to participate in Internal Dispute Resolution (Section 14.17 of this Declaration) or Alternative Dispute Resolution Before Initiating Lawsuit (Section 14.18 of this Declaration). To the extent required by *Civil Code* section 5705(c), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.
- 8.15.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

- 8.15.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 5705(d), the Association shall provide written notice of initiating foreclosure to the record Owner of the Lot, including notice by personal service to any resident Owner.
- 8.16 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, (section 2920 and following) of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale.
- 8.17 Right of Redemption. To the extent provided pursuant to *Civil Code* section 5715(b), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.
- 8.18 Assignment of Rents as Security for Payment. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may (i) instruct the tenant to pay rent to the Association as and when such rents become due or (ii) at any time upon ten (10) days' written notice to such Owner (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and in either event apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. Owner waives the giving of any and all notices required by the laws of the State of California in order for the Association to exercise the rights provided by this Section 8.18. The collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration. The assignment of rents and powers described in this Section 8.18 shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any First Mortgage on any Lot, or any part thereof, to do the same or similar acts.

- 8.19 Remedies Are Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments to the fullest extent permitted by law.
- 8.20 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 8.21 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recordation of the Notice of Delinquent Assessment as provided in Section 8.15.4 over all other liens and encumbrances applicable to the Lots; *provided, however*, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Lot prior to the date the Notice of Delinquent Assessment was recorded; and *provided, further*, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges becoming due after the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, nor from the lien of any subsequent Assessment, including Assessments levied against all Lots proportionately to compensate for the unpaid Assessments and Additional Charges, which shall constitute a lien upon the purchased Lot in accordance with this Article 8.
- 8.22 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.
- 8.23 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:
- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use;

- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; *provided, however*, that such exemption shall apply only during the period in which the Association is record owner of such Lot; and
- (c) All Common Area.

ARTICLE 9 MAINTENANCE OF PROPERTY

9.1 Association Responsibility for Common Area Generally. The Association shall provide maintenance, repair, and replacement of the Common Area, except for those components which are expressly the maintenance responsibility of individual Owners pursuant to Section 9.2 ("Owner Responsibility for Maintenance of Common Area"), and all facilities, improvements, and landscaping thereon, including but not limited to landscaping, irrigation system, drainage ditches, fences, retaining walls, private streets, private street lighting, mailboxes, private open spaces, and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. Without limiting the generality of the foregoing:

9.1.1 Landscaping, Janitorial, Painting. The Association shall specifically be responsible for providing lighting, landscaping, gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants upon the Common Area), and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of Common Area building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary. The Association shall also be responsible for maintaining the landscaping on Bennington Drive to the back of the curb;

9.1.2 Common Area Utilities and Services; Utility Laterals. The Association shall procure and pay for water, sewage, garbage, electrical, gas, telephone, fiberoptics, cable, and other service for the Common Area and (to the extent not separately metered or charged) for the Lots. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots. The Association shall maintain all utility installations located in the Common Area *except for* (i) those installations maintained by utility companies, public, private, or municipal and (ii) utility lateral lines that serve a single Lot exclusively, which are the responsibility of the Lot Owner. No Owner may relocate any utility lines, boxes, transformers or other components located on that Owner's Lot which serves any other Lot within the Development;

- 9.1.3 Mailboxes. The Association shall maintain, repair, and replace all mailboxes within the Development; however, Owners are responsible for their own mailbox keys;
- 9.1.4 Storm Drainage. The Association shall maintain, repair, and replace all portions of the storm drainage system which connect individual storm drain lines serving individual Dwellings to the main storm drain system at the outlet in the public right-of-way. Each Owner shall clean all catch basins and storm drainage improvements within the Owner's Lot, so as to maintain their capacity and flow;
- 9.1.5 Employees or Independent Contractors. The Association may perform its obligations and provide such services as the Board shall determine through employees of the Association or through independent contractors. In either case, Residents or Owners shall not interfere with or attempt to instruct any of such persons in the performance of their duties.
- 9.2 Owner Responsibility for Maintenance of Common Area.
- 9.2.1 Sidewalks Adjacent to a Lot. Each Owner shall be responsible to provide maintenance, repair, and replacement of the sidewalk immediately adjacent to his or her Lot. The Association shall maintain all other sidewalks or walkways within the Common Area.
- 9.2.2 Landscaping Adjacent to a Lot. Each Owner shall maintain, repair and replace all landscaping located in the area between the Owner's Lot up to the back of the curb on the private street immediately adjacent to the Lot (except in the case of Lots 72 and 73 where the Owner's maintenance obligations terminate at the edge of the sidewalk), including any portion of an adjacent Lot which is subject to a One Foot Use Easement for the benefit of the Owner's Lot as described in Section 4.9.1 ("One Foot Use Easements").
- 9.2.3 Street Trees. Each Owner shall be responsible for the maintenance, repair and replacement of street trees located in the median strip in front of his or her Lot.
- 9.3 Owner Responsibility for Maintenance of Lots.
- 9.3.1 Owner Responsibility for Lots Generally. Except to the extent that maintenance, repair, or replacement of any improvement on a Lot is expressly and clearly made the responsibility of the Association, each Owner shall be responsible for the maintenance, repair and

replacement of his or her Lot and all improvements thereon, keeping the same in a clean, sanitary, workable, and attractive condition.

- 9.3.2 Driveways. Each Owner shall be responsible for the maintenance, repair and replacement of all portions of the driveway which provides access between the Owners' Dwelling and the private street which provides access to that Lot. Driveways must be kept clean and free of oil and other chemical stains.
- 9.3.3 Sidewalks. Each Owner shall maintain, repair and replace all sidewalks and walkways located on his or her Lot.
- 9.3.4 Landscaping. Each Owner shall maintain, repair and replace all landscaping located within the Owner's Lot and including any portion of an adjacent Lot which is subject to a One Foot Use Easement for the benefit of the Owner's Lot as described in Section 4.9.1 ("One Foot Use Easements"). Owners of such Dominant Tenements of One Foot Use Easements shall be responsible for the maintenance, repair and replacement of landscaping on the One Foot Use Easement, subject to the terms of the One Foot Use Easement and as more fully set forth in Section 4.9.1.
- 9.3.5 Sideyard Drainage. No Owner may install any landscaping, concrete or other improvement within the Owner's sideyard in a manner which directs the flow of water towards or onto an adjacent Lot. Each Lot must be maintained so that all surface water is contained within the Owner's Lot and transported into the Development storm drain system.
- 9.3.6 Special Front Yard Restrictions. No Owner may install any concrete or other materials in their front yard which will increase the non-pervious surfaces of the front yard, except as approved by the City and the Architectural Committees.
- 9.3.7 Utility Lateral Lines. Each Owner shall be responsible for the maintenance, repair and replacement of utility lateral lines that serve the Owner's Lot exclusively, even if all or a portion of such line is situated in the Common Area, as stated in Section 9.1.2 ("Common Area Utilities and Services; Utility Laterals").
- 9.3.8 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portion of his or her Lot shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 7 ("Architectural Approval").

- 9.3.9 Party Fences. Owner responsibility for Party Fences shall be as set forth in Article 10 ("Party Fences").
- 9.3.10 Shared Fences. "Shared fences" shall mean and refer to any fence situated upon or approximately upon the boundary between any Lot and any portion of the Common Area. The Owner of the Lot upon which the shared fence is located shall be responsible to maintain, repair, and replace the shared fences in good condition and repair. The cost of maintenance, repair, and replacement of shared fences shall be the responsibility of the Lot Owner. The Board, in its discretion may perform maintenance, repair, or replacement of shared fences and charge the cost thereof to the Lot Owner as a Reimbursement Assessment.
- 9.3.11 Fences Along Development Boundaries. Each fence which separates a Lot from real property outside the Development shall be maintained, repaired and replaced by the Owner of the Lot. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint.
- 9.4 Wood Destroying Organisms. As provided in *Civil Code* section 4780(b), each Owner is responsible for and shall perform maintenance and repair of his or her Lot and Dwelling occasioned by the presence of wood-destroying pests or organisms, including mold, decay, dry rot, and termites. Without limiting the generality of the foregoing, every Owner and Resident shall be responsible for taking reasonable measures to prevent conditions that may cause such damage, including but not limited to use of proper spacers under planters and other objects that may trap moisture, stacking of firewood on racks, and prompt removal of leaves, dirt, and other debris and may be liable to the Association for the cost of maintenance, repair, or replacement due to damage as provided in Section 9.9 ("Owner Liability to Association for Negligent Damage").
- 9.5 Authority for Entry of Lot. The Association or its agents shall have the right to enter any Lot whenever such entry is necessary, in the Board's discretion, for purposes of inspection and/or in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except that in emergency situations notice shall be given as the situation reasonably permits.
- 9.6 Acceptance of Condition of Lot. Each Owner, by acceptance of a deed to a Lot, accepts responsibility for the condition of the Lot including but not limited to existing defects, unresolved architectural violations of any predecessor Owner, and failure of a predecessor Owner to perform maintenance, repairs, or replacement upon the Lot or any encroachments upon the Common Area that

are the responsibility of the Lot Owners, and the Association shall be entitled to exercise all of its enforcement powers with respect to the obligations of Lot Owner in connection with such conditions, whether or not such conditions were disclosed to the Owner.

- 9.7 Board Discretion To Require Maintenance. The Board shall have the discretion to determine whether any maintenance, repair, or replacement that is the responsibility of an Owner is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board pursuant to Section 14.13 ("Hearing Called by the Board; Executive Session; Open Meeting"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.
- 9.8 Limitation of Association Liability. The Association shall not be responsible or liable for damage to a Lot or any improvement thereon or contents thereof, except to the extent arising from the willful misconduct or gross negligence of the Association, its employees, contractors, or agents.
- 9.9 Owner Liability to Association for Negligent Damage. In the event the need for any maintenance, repair, or replacement performed by the Association is caused by the willful or negligent act or omission of an Owner or a Resident, a member of his or her household, pets, tenants, invitees, or guests, the cost of such maintenance, repair, or replacement not covered by insurance, including any applicable insurance deductible and the cost of materials, labor, supplies, and services shall be charged to, and paid by, the Owner of the Lot in the form of a Reimbursement Assessment.
- 9.10 Hiddenbrooke Maintenance Assessment District. The City has established the Hiddenbrooke Maintenance Assessment District which includes some or all of the real property in the Development and other real property within the City. Owners will be required to pay any amounts levied through the Maintenance Assessment District to offset the expenses which the City incurs to maintain lighting, landscaping, or other public improvements which serve the Development.

ARTICLE 10 PARTY FENCES

- 10.1 Party Fence Defined. Party Fence shall mean each fence built as part of the original construction of the Dwellings within the Development and placed on or approximately on the boundary line between the Lots. A fence that is situated on the boundary between a Lot and Common Area is a "shared fence" and shall be maintained, repaired, or replaced pursuant to Section 9.3.10 ("Shared Fences").

- 10.2 General Rules of Law to Apply. Unless and to the extent they conflict with the provisions of the Declaration, the general rules of law regarding party walls and boundary fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto, as provided in this Article 10.
- 10.3 Sharing of Maintenance, Repair, and Replacement Costs. The cost of maintenance, repair, and replacement of a Party Fence shall be shared by the Owners pursuant to the terms of any written agreement entered into between the Owners thereof for that purpose. In the absence of such a written agreement, such costs shall be shared by the Owners who make use of the Party Fence in proportion to such use; provided that if a Party Fence is destroyed or damaged by fire or other casualty, any Owner who has used the Party Fence may restore it, and if the other Owners thereafter make use of the Party Fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- 10.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article 10 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- 10.5 Party Fence Disputes. Party Fences are not Common Area and are not the responsibility of the Association. Any dispute concerning a Party Fence, or otherwise under the provisions of this Article 10, shall be subject to the alternative dispute resolution provisions in Section 14.18 ("Alternative Dispute Resolution Before Initiating Lawsuit").

ARTICLE 11 INSURANCE

- 11.1 Insurance Coverage to be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the types of insurance described in Section 11.2 ("Common Area Hazard Insurance to be Maintained by Association"), Section 11.3 ("Liability Insurance to be Maintained by Association"), and Section 11.4 ("Other Insurance to be Maintained by Association"), if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost.
- 11.2 Common Area Hazard Insurance to be Maintained by Association. The Association shall maintain a policy of fire and extended coverage insurance covering all of the Common Area and all furnishings, equipment, and personal property owned by the Association or owned in common by all of the Owners, with limits equal to one hundred percent (100%) of the full insurable replacement costs of the Common Area improvements exclusive of land, foundation,

excavations, and other items normally excluded from coverage. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals the replacement cost.

11.2.1 Policy Endorsements. The policy may include such endorsements as the Board, in its discretion, shall determine based on the character and replacement cost of the Common Area improvements from time to time, such as:

- (i) an agreed amount endorsement or its equivalent;
- (ii) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent;
- (iii) an extended coverage endorsement;
- (iv) coverage for costs of demolition;
- (v) glass coverage;
- (vi) coverage for loss or damage as a result of theft, vandalism, malicious mischief; coverage for equipment breakdown of any equipment required to run and operate the Development; sprinkler leakage; windstorm, or water damage;
- (vii) special form endorsement;
- (viii) a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild;
- (ix) coverage for demolition in the event of total or partial destruction and a decision not to rebuild; and
- (x) maintenance fees receivable coverage in case of damage to a Lot by a covered peril and the Board is unable, after reasonable effort to collect assessments from the Owner of the affected Lot.

11.3 Liability Insurance to be Maintained by Association. The Association shall maintain commercial general liability insurance insuring the Association, its officers and directors, and the Owners against any liability incident to ownership, maintenance, and repair of the Common Area, but excluding the liability of an Owner incident to personal bodily injury and property damage occurring within that Owner's Lot or in any other Lot or upon the Common Area resulting from the

negligence of that Owner. Limits of liability shall be set by the Board but shall in no event be less than Three Million Dollars (\$3,000,000).

11.3.1 Scope of Coverage. Such liability insurance policy shall insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area and if available and at a reasonable cost as determined by the Board shall include:

- (i) water damage liability;
- (ii) hired and non-owned vehicle coverage, theft and collision coverage;
- (iii) liability for property of others;
- (iv) off-premises employee coverage; and
- (v) such other risks as are customarily covered in similar developments.

11.3.2 Other Provisions. If available and at a reasonable cost as determined by the Board, such liability insurance policy:

- (i) shall contain a waiver of subrogation as to claims against the Association, the Board members, the Owners and members of the Owner's family who reside with such Owner, except in cases of arson or fraud;
- (ii) shall contain a waiver of the defense of invalidity on account of the conduct of any Owner over which the Board has "no control;"
- (iii) shall require that at least thirty (30) days' prior written notice be given to the Association by the insurer before cancellation except that in the case of cancellation for nonpayment of premiums or for fraud the notice shall be given no less than ten (10) days prior to the effective date of the cancellation;
- (iv) shall provide that in no event shall the insurance be brought into contribution with insurance purchased individually by Owners or their Mortgagees;
- (v) shall exclude policies obtained by the individual Owners from consideration under any "other insurance" clause; and

- (vi) shall contain a provision requiring the insurer to defend lawsuits for which there is coverage under the policy even if the allegations are fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limit as it deems expedient.

11.4 Other Insurance to be Maintained by Association.

- 11.4.1 Directors' and Officers' Insurance. The Association shall maintain directors' and officers' liability insurance with limits to be set by the Board but in no event less than One Million Dollars (\$1,000,000) or any higher applicable limit set forth in *Civil Code* section 5800, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers, and the directors, and the agents and employees of any of them. Coverage for prior acts, to the extent obtainable, shall be included.
 - 11.4.2 Workers' Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws and may carry such insurance at any time as determined by the Board.
 - 11.4.3 Fidelity Bond. The Association shall maintain a standard fidelity bond covering dishonest acts on the part of officers and directors of the Association, the manager, and any employees or volunteers who are responsible to handle funds of the Association. Such bond shall name the Association as obligee, shall be written in an amount which shall be determined by the Board, and shall contain a waiver of any defense based on the exclusion of persons serving without compensation.
 - 11.4.4 Other Insurance. The Association may maintain at any time and from time to time any other insurance, including but not limited to earthquake and/or flood insurance, and bonds as the Board may from time to time deem necessary or desirable.
- 11.5 Insurance to be Maintained by Owner. The insurance policies to be carried by the Association pursuant to Section 11.1 ("Insurance Coverage to be Maintained by the Association") are not intended to cover the Lots or the Dwellings, or liability of an Owner incident to ownership or use of his or her Lot or Dwelling or liability incident to an Owner's negligence upon the Common Area. Each Owner shall be responsible for procuring and maintaining hazard insurance on the Owner's Lot and Dwelling improvements, insurance against Owner liability incident to ownership or use of the Owner's Lot or Dwelling, liability incident to an Owner's negligence upon the Common Area, insurance on the contents of the Dwelling, and such other insurance as the Owner shall determine is adequate to cover such other risks as the Owner shall determine, including but not limited to

loss of use, additional living expenses, loss of rental income, and loss assessment coverage.

- 11.5.1 No Overlapping Coverage. No Owner shall obtain or maintain any policy of insurance that reduces the amount of coverage under any policy obtained or maintained by the Association pursuant to Section 11.2 ("Common Area Hazard Insurance to be Maintained by the Association"), Section 11.3 ("Liability Insurance to be Maintained by the Association"), or Section 11.4 ("Other Insurance to be Maintained by the Association"). If any Owner violates the provisions of this Section 11.5.1 ("No Overlapping Coverage"), any diminution in insurance proceeds otherwise payable to the Association that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance and each Owner hereby assigns to the Association the proceeds of any such policy to the extent any such decrease in proceeds in fact occurs (such proceeds to be applied pursuant to the Declaration as if produced by the Association's coverage). Such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment against such Owner in the amount of such diminution.
- 11.5.2 Other Owner-Maintained Insurance. Each Owner shall be responsible, at his or her sole cost and expense, to obtain such other insurance as the Owner shall determine is adequate to cover such other risks as the Owner shall determine, including but not limited to loss of use or loss of rental income.
- 11.5.3 Evidence of Insurance; No Obligation of Association. Upon request from the Board, each Owner shall provide evidence of such insurance annually. If an Owner fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the Owner does not insure. The right of the Board to request evidence of insurance that an Owner is obligated to carry pursuant to this Declaration shall not be deemed to impose a duty on the Board or the Association to request such evidence of insurance or impose on the Association any liability to any person arising or claimed to arise out of any action or inaction by the Board, the Association or anyone acting on the Association's or the Board's behalf with respect to verifying any Owner's compliance with the Owner's obligation to carry insurance.
- 11.6 HO4 Renter's Policy. Each Owner who rents or leases a Lot shall require the tenant to purchase and maintain in force during the tenancy an "HO4 Renters Policy" or the equivalent with a minimum personal liability limit of Three Hundred

Thousand Dollars (\$300,000). If an tenant fails to obtain any insurance he or she is obligated or permitted to obtain pursuant to this Declaration, nothing in this Declaration shall be construed to impose any obligation whatsoever on the Association to insure that which the tenant does not insure. Upon request from the Board, each Owner shall provide evidence of such tenant's insurance annually.

- 11.7 Insurance Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association and shall be distributed to the Association, the Owners, and their Mortgagees subject to the provisions of the Declaration as their interest may appear; *provided, however*, that whenever repair or reconstruction is required, the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction except to the extent of any excess insurance proceeds as provided in Section 12.2.4 ("Excess Insurance Proceeds").
- 11.8 Responsibility for Payment of Deductible. Subject to the provisions of Section 9.9 ("Owner Liability to Association for Negligent Damage"), the amount of the deductible under any insurance obtained by the Association shall be borne solely by the Association. If an Owner is responsible for the payment of such deductible, the failure or refusal of the Owner's insurance carrier to pay or reimburse the deductible shall not relieve the Owner of his or her responsibility for the deductible.
- 11.9 Owner Liability for Conditions Affecting Insurance. As provided in Section 5.11 ("Conditions Affecting Insurance"), the responsible Lot Owner shall be liable to the Association if anything is done, placed, or kept within the Development that increases the rate of insurance or results in the cancellation of insurance under any insurance policy maintained by the Association.
- 11.10 Insurance Carriers. All insurance policies carried by the Association shall be written by companies that are not prohibited from doing business in the State of California.
- 11.11 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.
- 11.12 Coverage Not Available; Disclaimer. In the event any insurance policy or any endorsement listed in in Section 11.2, ("Common Area Hazard Insurance to be Maintained by Association"), Section 11.3 ("Liability Insurance to be Maintained by Association"), and Section 11.4 ("Other Insurance to be Maintained by Association"), is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Association, and its directors and officers, shall have no liability to any Lot Owner or

Mortgagee if, after good faith effort, it is unable to obtain or maintain the insurance required pursuant to Section 11.2 ("Common Area Hazard Insurance to be Maintained by Association"), Section 11.3 ("Liability Insurance to be Maintained by Association"), and Section 11.4 ("Other Insurance to be Maintained by Association") because the insurance is no longer available or, if available, can be obtained or maintained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Special Assessment or increase in the Regular Assessment needed to fund the insurance premiums. In accordance with *Civil Code* section 5810, as soon as reasonably practicable, the Association shall notify the Members by Individual Notice if any of the policies described in Section 7.5.8 of the Bylaws ("Summary of Association's Insurance Policies") have lapsed or been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible for any of those policies. If the Association receives any notice of non-renewal of a policy described in Section 7.5.8 of the Bylaws and replacement coverage will not be in effect by the date the existing coverage will lapse, the Association shall immediately notify the Members by Individual Notice.

- 11.13 Copies of Policies. Copies of all insurance policies (or certificates of insurance) and paid invoices showing that premiums have been paid shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.
- 11.14 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to file all claims and to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to Section 11.2 ("Common Area Hazard Insurance to be Maintained by Association"), Section 11.3 ("Liability Insurance to be Maintained by Association"), and Section 11.4 ("Other Insurance to be Maintained by Association"). The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.
- 11.15 Premiums. The premiums for any insurance obtained by the Association shall be a common expense of the Association and shall be paid for out of the operating fund of the Association.

ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

- 12.1 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty to the Common Area or Common Area improvements as it may deem necessary or desirable under the circumstances including but not limited to mitigating or removing dangerous conditions and other actions that may be necessary to

comply with applicable laws, ordinances, and regulations; and the Board may charge the operating account for the costs thereof.

12.2 Damage to Common Area. In the event of damage to or destruction of the Common Area or other property of the Association or any part thereof, then the following provisions shall apply:

12.2.1 Amount of Insurance Proceeds. The Board shall obtain a determination of the amount of available insurance proceeds that will be recovered from the Association's insurance carrier(s).

12.2.2 Bids. The Board shall obtain such bids from responsible licensed contractors as the Board deems appropriate to restore the damaged or destroyed property to its condition immediately prior to such damage or destruction (including compliance with current building code and ordinance requirements and any modifications approved by the Board), including provision for a completion bond.

12.2.3 Sufficient Proceeds. If the insurance proceeds paid to the Association are sufficient to cover the costs of restoration, the Board shall contract with such contractor as the Board in its discretions shall determine and proceed to perform the restoration.

12.2.4 Excess Insurance Proceeds. Any excess insurance funds shall be deposited in the operating account of the Association.

12.2.5 Insufficient Proceeds; Decision Not to Repair. If the insurance proceeds, together with reserve funds, if any, allocated for replacement of the damaged or destroyed improvement, are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association up to the maximum amount permitted without a member approval vote as provided in Section 8.8.2 ("Permitted Amount of Special Assessments") to cover the cost of the repair or replacement not covered by the insurance proceeds. If the sum of insurance proceeds, allocated reserve funds, and Special Assessment funds equals less than eighty-five percent (85%) of the cost of repair or replacement, the Members may elect not to cause such replacement or repair by the vote of two-thirds (2/3) of the Total Voting Power of the Association. In that event, the damaged Common Area shall be cleared and landscaped; *provided, however*, that there shall exist in such Common Area adequate vehicular and pedestrian rights-of-way for Owners to ensure legal access to each Owner's Lot and the costs thereof shall be paid from the insurance proceeds, any allocated reserve funds and, if necessary, the other funds of the Association. Any remaining insurance proceeds shall be used in the manner

determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

- 12.2.6 Alternative Repair Plan. If a decision not to rebuild is not approved pursuant to Section 12.2.5 ("Insufficient Proceeds; Decision Not to Repair"), the Board shall use such funds as are available to repair or stabilize the damaged Common Area according to such alternative plan as the Board shall deem appropriate under the circumstances.

12.3 Rebuilding or Repair of Improvements on a Lot.

- 12.3.1 Owner to Repair. If any Lot or any improvement on a Lot is damaged or destroyed by fire or other casualty, the Owner(s) of such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Committee pursuant to Article 7 ("Architectural Approval").
- 12.3.2 Commencement and Completion of Repair. Repair or rebuilding shall be commenced and completed within the times specified in Section 7.17 ("Commencement of Approved Work") and Section 7.18 ("Completion; Extension of Deadline").
- 12.3.3 Insufficient Insurance Proceeds. In the event the insurance proceeds are insufficient to complete such work, the Lot Owner shall pay such additional sums as may be necessary to complete such rebuilding and repair.
- 12.3.4 Destruction; Failure to Timely Repair. In the case of total or substantially total destruction of a Dwelling, if restoration is not commenced within one (1) year after the occurrence of the destruction, the Board may require that the foundation and other installations be removed and the Lot restored to a safe, orderly, and natural condition. Nothing in the preceding sentence shall be deemed to limit the right of the Association to otherwise enforce the obligation of an Owner to restore or rebuild the damaged structures and restore the Lot as provided in the first sentence of Section 12.3.1.

12.4 Condemnation of Common Area.

- 12.4.1 Association to Represent Owners. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Association shall represent the interests of all Owners in any

proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

- 12.4.2 Condemnation Award. The entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be distributed equally to all Owners.

12.5 Condemnation of Lots.

- 12.5.1 Total Condemnation of Lot. If an entire Dwelling or Lot, or so much thereof as to render the remainder unfit for use as a Dwelling, is condemned or taken for a public or quasi-public use pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last.

- 12.5.2 Partial Condemnation of Lot. If only a portion of a Dwelling or Lot is taken and the remainder is fit for use as a Dwelling, the Owner shall continue to be a Member of the Association.

- 12.5.3 Rights of Association. In any condemnation action involving an Owner's Dwelling or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

- 12.6 Revision of Documents. In the event of (i) a partial or complete condemnation of the Common Area or the taking of all or a portion of the Common Area by right of eminent domain or by private purchase in lieu of eminent domain, (ii) condemnation or taking of one or more Lots, or (iii) a decision by the Association by affirmative act or failure to act, not to repair damaged Common Area, the Association shall have the power and authority to resurvey the remaining portion of the Development and to execute and record, on behalf of itself and the individual Owners, all necessary documents to show the altered status of the Development, including but not limited to a revised Subdivision Map and an amended Declaration and readjustment of the percentages of undivided interest of the remaining Owners in the Development, if applicable.

ARTICLE 13 RIGHTS OF MORTGAGEES

- 13.1 Conflict. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article 13 shall control with respect to the rights and obligations of Mortgagees specified in this Article 13.

- 13.2 Mortgages Permitted. Any Lot Owner may encumber his or her Lot with a Mortgage. Any Owner who encumbers his or her Lot with a Mortgage shall notify the Association in writing of the name and address of his or her Mortgagee and Mortgage insurer, if any.
- 13.3 Intention to Conform to Mortgagee Requirements. It is intended that the Declaration, the Bylaws, and the Articles and the Development in general shall be able to meet the requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Lot in the Development by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association or any other or successor institution(s) serving the same or similar function. To that end, the Board is authorized, but not obligated, to take such action or adopt such resolution required by any Mortgagee to bring the Declaration or the Bylaws or the Development into conformity with the requirements of any of these entities or agencies as the Board in its discretion shall determine is reasonably achievable and consistent with the interests of the Association and of its Members as a whole.
- 13.4 Subordination of Assessment Lien. Assessment liens shall be subordinate to the lien of First Mortgages to the extent provided in Section 8.21 ("Subordination to Lien of First Mortgage").
- 13.5 Notice of Mortgage Default. Each Mortgagee of a Lot shall give the Association written notice of default by its mortgagor under the Mortgage within ten (10) days following recordation of a notice of default in accordance with the provisions of *Civil Code* section 2924b or any amendment or superseding statute.
- 13.6 Inspection of Books and Records. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records, and financial statements of the Association and the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.
- 13.7 Audited Financial Statements. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Mortgagee.
- 13.8 Mortgage Protection. No breach of any of the covenants, conditions and restrictions nor the enforcement of any lien provisions contained in this Declaration shall render invalid the lien of any First Mortgage made in good faith and for value on any Lot, but all of the covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

ARTICLE 14 ENFORCEMENT; NOTICE; HEARINGS

- 14.1 Master Declaration. The Association shall have the right, but not the obligation, to enforce any use restrictions set forth in the Master Declaration. Each Owner shall comply with all applicable provisions of the Master Declaration.
- 14.2 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; *provided, however*, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.
- 14.3 Violation of Law is a Violation of the Declaration. Any violation of a state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 14.4 Owner Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household, Contract Purchasers, tenants, invitees, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, and any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or the conduct of any pet belonging to any of them. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several; that is, each co-Owner individually shall be fully liable and responsible and all co-Owners collectively shall be fully liable and responsible. The foregoing provisions of this Section 14.4 are in addition to and shall not limit the generality of the provisions of Section 5.8.2 ("Indemnification Regarding Business Activity"); Section 5.14 ("Animals"); Section 6.6 ("Association as Third Party Beneficiary"); Section 6.7 ("Indemnification Regarding Tenant's Actions"); and Section 7.23 ("Disclaimer of Liability").

- 14.5 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 14.6 Enforcement Rights Are Cumulative. To the fullest extent permitted by law, including *Civil Code* section 5975, the Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies (including self-help remedies that do not breach the peace or otherwise violate applicable law or this Declaration) as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 14.7 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner, Contract Purchaser, member of his or her household, tenant, invitee, guest, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.
- 14.8 Limitation on Association's Disciplinary Rights. To the extent provided in *Civil Code* section 4510, the Association shall not have the power and authority to cause a forfeiture or abridgment of an Owner's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of his or her household, Contract Purchaser, tenants, invitees, guests or pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 8.18 ("Assignment of Rents as Security for Payment"). The provisions of this Section 14.8 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 14.9 ("Imposing Sanctions").
- 14.9 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing called by the Board and conducted in accordance with this Article 14, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

- 14.9.1 Loss of Good Standing. The Board may suspend a Member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Association voting rights shall be suspended and the Member shall be disqualified from serving on the Board.
- 14.9.2 Monetary Penalties (Fines). The Board may adopt a policy imposing monetary penalties or fines (which shall constitute Enforcement Assessments) pursuant to *Civil Code* section 5850. Such policy, if adopted, which shall be distributed to the Member in the annual policy statement pursuant to *Civil Code* section 5310. Multiple fines may be imposed for multiple violations. The schedule of fines may be changed by the Board by a Rule change pursuant to *Civil Code* section 4360 and following.
- 14.9.3 Monthly Sanctions For Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose sanctions, including monetary penalties, such sanctions to remain in effect for a period of one (1) month or until the continuing violation is remedied, whichever occurs sooner. (By way of example and not limitation, a violation in the nature of parking every day in a prohibited parking area would *not* constitute a "continuing violation" but each instance would constitute a separate violation.) If the continuing violation has not been remedied within the one month period, the Board may impose separate and successive sanctions for the continuing violation, provided the Board conducts a separate hearing, not more frequently than once a month, before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.
- 14.9.4 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.
- 14.10 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.
- 14.11 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents

exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 14.12 ("Notices: Content, Delivery").

14.12 Notices: Content, Delivery. Any notice of violation required or given under this Article 14 shall be in writing and shall comply with *Civil Code* section 5855 as to content and time of service and with *Civil Code* section 4040 as to method of service.

14.12.1 Content of Notice of Violation. Any notice given by the Association to a Member shall comply with *Civil Code* section 5855 and shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents; a reference to the specific Governing Document provision or provisions alleged to have been violated; if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board; and any sanction, disciplinary action, or other enforcement action being contemplated by the Board.

14.12.2 Delivery of Notice. Any notice may be given by any method provided for in *Civil Code* section 4040; *provided, however*, that (i) if notice is given by mail, it shall be sent postage prepaid by United States first-class mail and/or by certified mail return receipt requested; and (ii) if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association. Pursuant to *Civil Code* section 4050(b), if sent by United States mail, delivery of such is deemed complete upon deposit in the United States mail, postage prepaid. Pursuant to *Civil Code* section 4050(c), if such notice is sent by electronic means, delivery is deemed complete at the time of transmission.

14.12.3 Owner's Address for Notice. It shall be each Owner's responsibility to notify the Association in writing of any change in the Owner's address for the purpose of receiving notices from the Association. The fact that a different address appears on correspondence to the Association from an Owner shall not constitute such written notice, unless it is expressly stated that such address is a change of address for the purpose of receiving notice from the Association. Upon transfer of title to a Lot, the transferee shall be responsible for notifying the Association of such transfer. The notification shall set forth the address of the Lot, the names of the transferee and the transferor, and the date of sale or other transfer. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association or the Board to the Lot Owner shall be deemed to be duly made and given to the transferee if duly and timely made and given to the person

shown as the Owner of the Lot and at the address in the Association's records.

- 14.12.4 Notice to Co-Owners or Occupants. Unless otherwise provided by law, when a Lot is owned by two (2) or more co-Owners or is occupied by two (2) or more Occupants, notice to one (1) Owner or to one (1) Occupant shall be deemed notice to all Owners or to all Occupants, as the case may be.
- 14.13 Hearing Called By the Board; Executive Session; Open Meeting. To the extent required by *Civil Code* section 5855, whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) and/or Resident(s) in writing by Individual Delivery pursuant to *Civil Code* section 4040, at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, *unless* (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 5673 concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 4765. In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner or Resident fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.
- 14.14 Owner Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 14.11 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 14.16 ("Enforcement by Association in Emergency Situations") or as otherwise provided in the Governing Documents, may request a hearing before the Board by submitting a written request to the Board. If an Owner is requesting a meeting to discuss a payment plan for a past due debt owed to the Association, the meeting shall be scheduled and conducted as provided in Section 8.15.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 14.11 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 14.16 ("Enforcement by Association in Emergency Situations"), the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 14.13 ("Hearing Called by the Board; Executive Session; Open Meeting").

14.15 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Owner or Resident in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

14.16 Enforcement by Association in Emergency Situations.

14.16.1 Definition of Emergency Situation. For purposes of this Section 14.16, the following shall constitute emergency situations:

- (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development;
- (ii) a traffic or fire hazard;
- (iii) a threat of material damage to or destruction of the Development or any portion thereof;
- (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

14.16.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 14.14 ("Owner Request for Hearing"), enforcement of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

14.17 Internal Dispute Resolution.

14.17.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 7 ("Architectural Approval") and of Section 14.10 ("Investigation of Complaints") through Section 14.16 ("Enforcement by Association in Emergency Situations") are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and any Member that are subject to *Civil Code* sections 5900 through 5920 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the Declaration shall

constitute the Association's "internal dispute resolution" process as required by *Civil Code* section 5905.

14.17.2 Statutory Default Procedures. If the Association shall fail to comply with the Association's internal dispute resolution process, then the Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 5915, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 5910.

14.17.3 Alternative Dispute Resolution May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and excluding Assessment disputes) are subject to *Civil Code* sections 5925 through 5965 and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Section 14.17.1 ("Fair, Reasonable, and Expeditious Procedure"), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* sections 5925 through 5965, without first complying with the "alternative dispute resolution" procedures set forth in that statute and referenced in Section 14.18 ("Alternative Dispute Resolution Before Initiating Lawsuit").

14.17.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process required by *Civil Code* section 5920 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such description may consist of a copy of Article 7 ("Architectural Approval") and Section 14.10 ("Investigation of Complaints") through this Section 14.17 ("Internal Dispute Resolution").

14.18 Alternative Dispute Resolution Before Initiating Lawsuit.

14.18.1 Annual Disclosure of ADR Process. As provided in *Civil Code* section 5965, the Association shall annually provide to its Members a summary of the provisions concerning alternative dispute resolution contained in *Civil Code* sections 5925 through 5965 as part of the annual policy statement prepared pursuant to *Civil Code* section 5310. Such summary may consist of a copy of this Section 14.18. Such summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the *Civil Code* may result in the loss of the member's right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

- 14.18.2 When ADR Applies. The requirements of this Section 14.18 apply to civil action or proceedings as defined in *Civil Code* section 5925(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of the jurisdictional amount for a small claims action as stated in *Code of Civil Procedure* sections 116.220 and 116.221, all as provided in *Civil Code* section 5930(b). *Civil Code* sections 5925 through 5965 apply to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 14.18 do not apply to Assessment disputes or to an action in small claims court.
- 14.18.3 Statutory ADR Process. In accordance with *Civil Code* sections 5925 through 5965, the Association or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 5925(a) and as the process is specified in *Civil Code* sections 5935, 5940, and 5945.
- 14.19 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 14.20 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, Contract Purchaser, member of his or her household, tenant, invitee, guest, or pet has violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall, to the fullest extent permitted by law, be entitled to recover the full amount of all costs including attorneys' fees incurred by the Association in responding to such violation and/or in enforcing any Governing Document provision. Without limiting the generality of the foregoing, in the event an Owner pursuant to *Civil Code* section 4605 brings a civil action for violation of *Civil Code* section 4600 (concerning the granting of exclusive use of a portion of the Common Area to a Member) or pursuant to *Civil Code* section 4955 a civil action for violation of the Common Interest Open Meeting Act (*Civil Code* sections 4900 through 4955) if the Association shall prevail in any such action, the Association shall be entitled to recover reasonable attorneys' fees except to the extent prohibited by law. In awarding attorneys' fees, the court shall not be bound by

any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs, expenses, and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment.

ARTICLE 15 AMENDMENT

- 15.1 Required Approval. This Declaration may be amended by the affirmative vote of Members representing at least a Majority of a Quorum of the Owners, provided that for purposes of voting to amend the Declaration a quorum shall mean at least fifty percent (50%) of the Total Voting Power of the Association; *provided, however,* that, upon advice of legal counsel licensed to practice law in the State of California including the drafting by legal counsel of appropriate amendatory provisions, the Board shall have the authority without the requirement of Member approval to amend any provision of the Declaration (i) to resolve any conflict between the Declaration and applicable law which may arise due to the enactment or amendment of a statute or due to a development in applicable case law or (ii) to conform the provisions of the Declaration to changes in applicable statutory law that impose requirements that are non-discretionary in nature.
- 15.2 Amendment Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the County Recorder.
- 15.3 Presumption of Validity. There will be a presumption subsequent to the recording of an amendment to this Declaration pursuant to Section 15.2 ("Amendment Must Be Recorded") that all votes and consents required to pass the same pursuant to Section 15.1 ("Required Approval") were duly obtained in accordance with the Governing Documents and applicable law. Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded. In the absence of any such action, such presumption shall thereafter become conclusive.

ARTICLE 16 GENERAL PROVISIONS

- 16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

- 16.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 16.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 16.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 16.6 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.
- 16.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.
- 16.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, until August 31, 2051 and thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to that date or within six (6) months prior to the expiration of any ten (10) year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Solano County, California.

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IN WITNESS WHEREOF, we, the Members of VILLAGE AT HIDDENBROOKE ASSOCIATION, pursuant to the requisite approval, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Village at Hiddenbrooke Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Solano County, California.

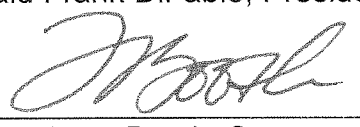
DATED: 11/11/14

VILLAGE AT HIDDENBROOKE
ASSOCIATION, a California nonprofit
mutual benefit corporation



Ronald Frank DiFabio, President

DATED: 11/12/14



Teresa Anne Booth, Secretary

EXHIBIT A

(Section 1.40)

Subdivision Map

22DS12

THE VILLAGE AT HIDDEN BROOKE

PARCEL 8 SKY VALLEY UNIT NO. 1 AMENDING FINAL MAP (64 SD 18) AND PARCEL 7, ULA 99-24 (Case) - L.A. B.S.L. OFFICIAL RECORDS OF SOLANO COUNTY

CITY OF VALLEJO - SOLANO COUNTY - CALIFORNIA
 Prepared By:
 Millwright & Associates Land Surveyors
 4800 Bakers Avenue, Suite 655
 Pittsburg, CA, California 94533
 DECEMBER 2000 SCALE 1"=100'

BOUNDARY

SEE SHEET 3 HEREIN FOR THE ENTIRE SUBDIVISION OF PARCELS

BASES OF BEARINGS

BEARINGS SHOWN HEREIN ARE BASED UPON THE LINE BETWEEN FOUND MONUMENTS ON THE CENTERLINE OF SERRANITO DRIVE, FORMERLY HALCYON DRIVE, AS SHOWN ON THE AMENDING FINAL MAP OF SKY VALLEY UNIT NO. 1 (64 SD 18) AS NASTILOCITE BEARINGS AND DISTANCES. MONUMENTS ARE BEARINGS AND DISTANCES: MONUMENT 1 TO MONUMENT 2 BY 1.000000000 TO OBTAIN GRID LOCATIONS. GRID COORDINATES AT CITY OF VALLEJO GPS STATIONS 9912 GPS BEARINGS SHOWN HEREIN WERE DETERMINED BY GPS OBSERVATIONS.

LEGEND

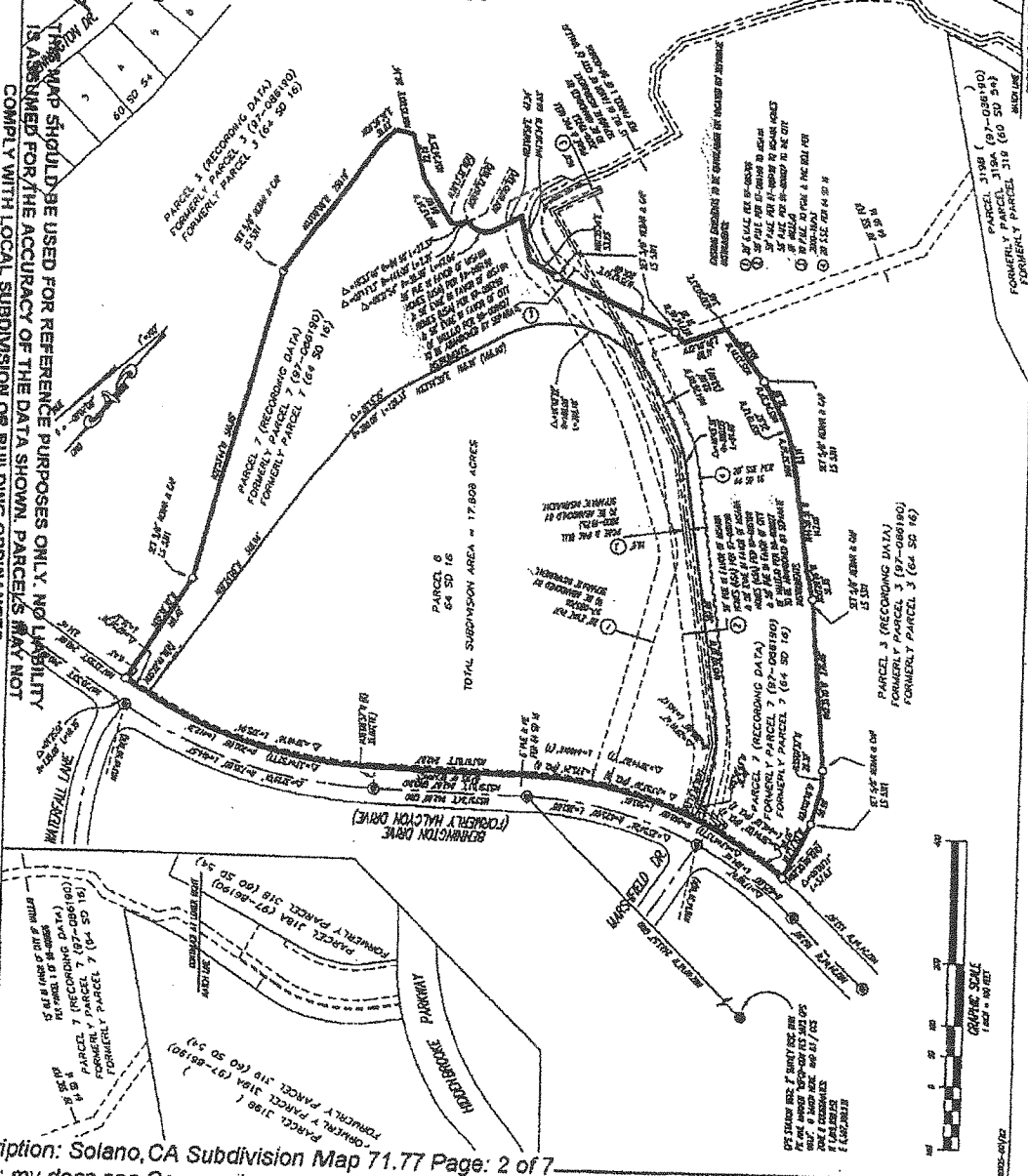
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- EXISTING BOUNDARY OF PARCELS
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GEOTECHNICAL STUDY INFORMATION

THE GEOTECHNICAL STUDY INFORMATION IS BASED UPON THE RESULTS OF THE GEOTECHNICAL STUDY CONDUCTED BY THE GEOTECHNICAL ENGINEER AS SHOWN ON THE GEOTECHNICAL STUDY REPORT. THE GEOTECHNICAL STUDY REPORT IS THE BASIS OF BEARINGS AND DISTANCES FOR THE ENTIRE SUBDIVISION OF PARCELS.

THIS MAP SHOULD BE USED FOR REFERENCE PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

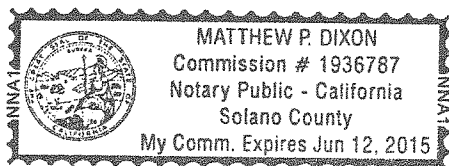


71 SD 78

escription: Solano, CA Subdivision Map 71.77 Page: 3 of 7
Order: my docs sac Comment:

STATE OF CALIFORNIA)
) ss.
COUNTY OF Solano)

WITNESS my hand and official seal.



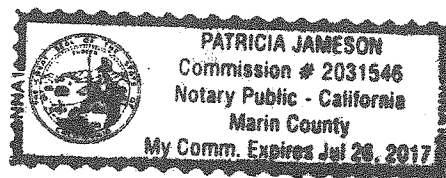
Signature Matthew T. Lyons (Seal)

VILLAGE AT HIDDENBROOKE
ASSOCIATION

AMENDED AND RESTATED
DECLARATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF Marin)

Signature Daniel J. Gomez (Seal)



VILLAGE AT HIDDENBROOKE
ASSOCIATION

AMENDED AND RESTATED
DECLARATION

Government Code 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary

Patricia Jameson

Commission Number

#2031546

Commissioned in

Marin County

Date Commission Expires

July 26, 2017

Date:

11/21/14

Signature

Cymon A. Aft

Berding + Weil

Firm Name (if any)