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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
CARRIAGE HILLS RESIDENTS' ASSOCIATION**

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CARRIAGE HILLS RESIDENTS' 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 CARRIAGE HILLS RESIDENTS' 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 Dame Construction company, Inc., a California corporation which, as Declarant, executed that certain Declaration of Covenants, Conditions and Restrictions of Carriage Hills, a Planned Development Project (Subdivision 6320), dated March 11, 1985, and recorded on March 18, 1985, in Book 12228, Pages 437 through 484, inclusive, Instrument/Series No.85-32325, Official Records of Contra Costa County, State of California (referred to in this document as the "1985 Declaration").
- B. An amendments and declarations of annexation to the 1985 Declaration were recorded on various dates as set forth in Exhibit A.
- C. The 1985 Declaration as amended 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 City of Richmond, County of Contra Costa, State of California, and more particularly described as follows:

Lots 1 through 236, inclusive, and 238 through 249, inclusive, and Parcels A, B, C and D as shown on that certain subdivision map entitled "Subdivision 6320" recorded in the Official Records of the County of Contra Costa, State of California, in Book 283 of Maps at Page 5, *et seq.*, on September 21, 1984, as corrected by Certificate of Correction recorded in the Official Records of the County of Contra Costa, State of California, Book 12180 at page 793, on February 11, 1985; and

- 1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.7.
- 1.3 Architectural Committee. "Architectural Committee" shall mean the Committee, if any, appointed pursuant to Article 7 ("Architectural Approval").
- 1.4 Articles. "Articles" shall mean the Articles of Incorporation of Carriage Hills Residents' Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.6 Association. "Association" shall mean Carriage Hills Residents' Association, a California nonprofit mutual benefit corporation, its successors and assigns.
- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 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.
- 1.9 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 benefit of the Owners and Residents. The Common Area currently consists of Parcels A, B, and C of Subdivision 6320 and Parcels A and B of Subdivision 6485, as shown on the Subdivision Maps.
- 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 Contra Costa.

- 1.14 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Carriage Hills Residents' Association, recorded in the Office of the County Recorder of Contra Costa County, California, and any duly recorded amendments thereof.
- 1.15 Development. "Development" shall mean all the real property described in this Declaration comprising the Carriage Hills Residents' 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. The term "Dwelling" shall include all accessory structures and/or any garage, porch, stoop, deck, balcony, entry steps, patio, etc., serving the primary residential structure.
- 1.17 Eligible Holder. "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association which contains its name and address and the number or address of the Lot encumbered by the Mortgage and requests that the Association deliver a written notice to it of any or all of the events specified in Section 12.8 ("Notices to Eligible Holders").
- 1.18 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 8.11.
- 1.19 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.
- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.
- 1.21 Institutional Mortgagee. "Institutional Mortgagee" shall mean (i) a First Mortgagee that is the State of California, a bank, a savings and loan association, an insurance or mortgage company, or other entity or institution chartered under or regulated by any federal and/or state law; or (ii) an insurer or governmental guarantor of a First Mortgage including but not limited to the Federal Housing Authority and the Veterans Administration.
- 1.22 Lot. "Lot" shall mean the Lots numbered 1 through 236 and 238 through 249, inclusive, and Parcel D of Subdivision 6320 and the Lots numbered 1 through 191, inclusive, of Subdivision 6485, as shown on the Subdivision Maps. There are 440 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, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants and annual weed abatement for fire prevention.
- 1.24 Member. "Member" shall mean an Owner.
- 1.25 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 13 ("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 1363(h).
- 1.26 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense encumbering a Lot.
- 1.27 Mortgagee. "Mortgagee" shall mean a beneficiary under a Mortgage.
- 1.28 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.
- 1.29 Party Fence. See Section 9.3.1 ("Party Fence Defined").
- 1.30 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.10.
- 1.31 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.
- 1.32 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean reconstruction, restoration, or substitution of the whole or a part of property that has deteriorated or has been damaged

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 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. 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.
- 2.3 Voting. Only Members in Good Standing shall be entitled to vote and, only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.
- 2.4 Association Rules. Subject to applicable law including *Civil Code* section 1357.100 *et seq.* 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, above.
- 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 No Partition. There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, bequest, devise, or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment.

- 3.4 Annexation. No property shall be annexed to the Development without prior approval of a majority of the Total Voting Power of the Association as to the principal terms of such annexation, including the principal terms of any merger of the Association with one or more other entities incident to such annexation.
- 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 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 except upon the approval of a majority of the Total Voting Power of the Association.
- 3.6 Sale, Encumbrance, Etc., of Common Area. Action by the Association to abandon, partition, subdivide, encumber, sell, or transfer the Common Area is subject to the provisions of Section 12.14(a). (“Other Actions Requiring Consent of Mortgagees”).

ARTICLE 4 COMMON AREA AND EASEMENTS

- 4.1 Use of Common Area Generally. Subject to the provisions of the Declaration, 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 as provided in the Governing Documents.
- 4.2 Notice Regarding Household Members, Tenants, or Contract Purchasers. Each Owner shall notify the Board or the Association’s manager of the names of any tenants or any Contract Purchasers occupying such Owner’s Lot. If requested by the Board, each Owner, tenant, or Contract Purchaser shall also notify the Board or the Association’s manager of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship each such person bears to such Owner, tenant, or Contract Purchaser.
- 4.3 Common Area Construction or Alteration. Except as may be authorized by the Board, no person or entity other than the Association or its duly-authorized agents shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy

any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

- 4.4 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.
- 4.5 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 particularly identified in this Article 4.
- 4.6 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 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.
- 4.7 Easements of Encroachment. There are reserved and granted for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and the Common Area, as servient tenements, and for the

benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy, and use of such portions of Lots and/or Common Area as shall be encroached upon, used, and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movements, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Development is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for maintenance of the encroaching improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement shall be created 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.

- 4.8 Easements for Maintenance of Party Fence. The Owners of contiguous Lots separated by a Party Fence shall have a reciprocal easement over and across such portions of the contiguous Lot as is necessary to maintain, repair, or replace such fence.
- 4.9 Association's Easement for Maintenance. There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Governing Documents, including without limitation the right to enter upon the Lots.
- 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 easements, licenses for use, and rights of way 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 1363.07(a)(1),(2), and (3).

ARTICLE 5 USE RESTRICTIONS

- 5.1 Residential Use. Except to the extent permitted in Section 5.4 ("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.

5.2 Number of Occupants. No Dwelling shall be permanently occupied by a number of Residents that is more than two times the number of bedrooms. In no event shall any Dwelling be occupied by more individuals than permitted by applicable zoning laws or other governmental regulations.

5.3 Rental of Lots. Renting or leasing of any Lot shall be subject to the provisions of Article 6 ("Renting or Leasing").

5.4 Restriction on Businesses.

5.4.1 Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) such professional and administrative occupations 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; 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 including family day care homes and residential care facilities as provided in Section 5.5 ("Family Day Care Homes") and Section 5.6 ("Residential Care Facilities").

5.4.2 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 5.4. Any amounts owed pursuant to this Section 5.4.2 may be assessed as a Reimbursement Assessment.

5.5 Family Day Care Homes. No family day care home for children shall be permitted within the Development except as specifically authorized by California *Health and Safety Code* section 1597.40 and other applicable state statutes. The owner/operator of any permitted family day care home shall provide the Association with prior written notice as to its operation, and comply with all local and state laws regarding the licensing and operation of a day care home and, in addition, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home, as provided under *Health and Safety Code* section 1597.531. This Paragraph (a) of Section 5.5 is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in *Health and Safety Code* section 1597.231;
- (b) Be subject to the provisions of Section 5.4.2 ("Indemnification Regarding Business Activity");
- (c) Abide by and comply with all of the Association's Rules;
- (d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and
- (e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the home to these conditions, or other reasonable requests.

5.6 Residential Care Facilities. Except for residential facilities serving six (6) or fewer persons and permitted in accordance with California Health & Safety Code sections 1566.3 and 1569.85 and other applicable state statutes, no health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped, or retarded shall be permitted in the Development. The owner/operator of any permitted residential care facility shall comply with all local and state laws regarding the licensing and operating of such facility, and, in addition, to the extent permitted by applicable laws, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of such residential care facility;
- (b) Be subject to the provisions of Section 5.4.2 ("Indemnification Regarding Business Activity");

- (c) Abide by and comply with all of the Association's Rules as applied to Lots in the Development in a general manner;
- (d) Supervise and be completely responsible for occupants of such residential facility at all times while they are within the Development; and
- (e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of such residential care facility to these conditions, or other reasonable requests.

5.7 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 thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with Residents' use of the Common Area 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, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. 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.

5.8 Use of Common Area; No Obstruction. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and 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. Each Owner shall avoid causing any damage to the Common Area.

5.9 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.

5.10 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.

5.11 Animals.

5.11.1 Limitation on Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. No more than a total of two (2) dogs, cats, or other customarily uncaged household pets may be kept on each Lot. No pet shall be permitted outside of an Owner's Lot unless the pet is under leash restraint, or is caged, or carried by a responsible person capable of controlling the pet. Any pet that is outside an Owner's Lot and is not under leash restraint may be removed from the Development.

5.11.2 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.

5.11.3 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 5.11. Any amounts owed pursuant to this Section 5.11.3 may be assessed as a Reimbursement Assessment.

5.11.4 Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section 5.11. 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 13.12 ("Hearings Called by the Board"), is found by the Board to be a nuisance.

- 5.12 Trash Disposal. All 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 except on the day of the week that pick-up is scheduled to occur. 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.
- 5.13 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or operated upon a Lot except as is customary and necessary in connection with approved construction.
- 5.14 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) Noncommercial signs or posters no larger than 9 square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed upon a Lot or Dwelling, and limited to the fullest extent permitted by *Civil Code* section 1353.6;
 - (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and the Architectural Guidelines, 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 1353.5;
 - (f) A single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
 - (g) 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.

5.15 Vehicles and Parking.

- 5.15.1 Parking. Vehicles shall not be parked anywhere in the Development except wholly within a garage, upon a driveway, or in public streets.
- 5.15.2 Restricted Vehicles. Restricted Vehicles may be parked entirely inside a garage or on a public street as permitted by ordinance but shall not be parked in driveways within the Development. The following types of vehicles are Restricted Vehicles: dilapidated, inoperable, or unregistered vehicles; campers, mobile homes, motor homes, recreational vehicles, trailers, boats, motor cycles, golf carts or similar equipment, and commercial vehicles. A two-axle passenger vehicle or pickup truck that is used for both business and personal uses by a Resident shall not be considered a "commercial vehicle" so long as any signs or markings of a commercial nature on such vehicle shall be unobtrusive and inoffensive as determined by the Board.
- 5.15.3 Vehicle Repairs. No part of the Common Area shall be used for repairing, constructing, or reconstructing any vehicle, boat or any other item or thing, except in an emergency and then only for minor emergency repairs to the extent necessary to move the vehicle to a repair facility.
- 5.15.4 Garage Doors. Garage doors shall remain closed except when vehicles or people are entering or leaving the garage or when necessary to provide ventilation for individuals working in the garage area.
- 5.15.5 Parking Enforcement. The provisions of this Section 5.15 apply to all vehicles within the Development, including vehicles of guests. In addition to the provisions of this Section 5.15, 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 sections 22658, the Board shall have the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents. Costs incurred by

bellboy services. This Section 6.2 shall not be deemed to permit an initial lease or rental term shorter than one year as provided in Section 6.1(a)(i).

- 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 or an Owner from sharing his or her Lot or Dwelling with a roommate or other person(s) with whom the Resident or Owner maintains a common household.
- 6.4 Limitation on Number of Permitted Rentals. Except as provided in this Section 6.4, not more than fifteen percent (15%) of the Lots [that is, 66 Lots] within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least eighty-five percent (85%) of the Lots [that is, 374 Lots] are Owner-occupied. For purposes of this Section 6.4, Resident who is a beneficiary under a trust shall be deemed to be an Owner-occupant if legal title to the Lot is in the name of the trustee(s) of the trust.
- 6.4.1 Grandfathered Lots. The limitation on the number of permitted rentals as set forth in Section 6.4 ("Limitation on Number of Permitted Rentals") shall not apply to Lot which is being leased or rented on the date this Declaration is recorded, but shall apply to any such Lot if legal title to such Lot is transferred subsequent to the date this Declaration is recorded, such that if the number of Lots being rented at the time of such sale or transfer is more than the number permitted pursuant to Section 6.4, the Lot shall be sold or transferred for Owner-occupancy and not for rental. For purposes of this Section 6.4.1, "transfer" shall mean any conveyance that requires the payment of a transfer fee.
- 6.4.2 Hardship Waivers. The Board shall have the right but shall not be obligated to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship; provided (i) such waiver shall be for a limited term, not to exceed one (1) year, (ii) the Owner requesting the waiver shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Lot as a Resident thereof upon the expiration of the specified limited term, and (iii) the waiver shall be subject to such other conditions as the Board may

determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

- 6.4.3 List of Rented Lots. The Board shall establish and maintain a list of all Owners currently leasing or renting a Lot. The list of rented Lots shall include: (i) the Owner's name, (ii) the address of the rented Lot, (iii) the Owner's record date of ownership, and (iv) the term of the lease. The list of rented Lots shall be made available to any Owner. Payment of a reasonable administrative charge to be set by the Board may be required.
- 6.4.4 Written Request to Rent. Any Owner desiring to rent his or her Lot shall submit to the Board a written request to rent, which shall state: (i) the Owner's name and mailing address, (ii) the Lot address, (iii) the Owner's record date of ownership, (iv) the proposed lease term and the number of tenants; and (v) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Lot.
- 6.4.5 Priority of Requests to Rent. The Board shall establish and maintain a priority list of requests to rent, organized in the order of date received by the Board. The priority list shall include (i) the name of the requesting Owner, (ii) the address of the Lot in question, (iii) the Owner's record date of ownership, and (iv) the date the written request was received by the Board.
- 6.4.6 Review of Request to Rent. Within thirty (30) days after receipt, the Board shall review and shall approve or deny an Owner's request to rent. Written notice of the Board's decision shall be transmitted to the requesting Owner and if the request is denied, the notice shall specify the reason(s) for denial. The Board shall approve the application unless doing so will increase the number of Lots leased or rented within the Development to more than the number permitted under Section 6.4, or will otherwise result in the violation of any provision of this Article 6. When the number of Lots leased or rented in the Development is less than the number permitted under Section 6.4, the Board shall authorize the Owner who submitted the earliest received application to lease or rent his or her Lot. When the number of Lots leased or rented in the Development equals or exceeds the number permitted under Section 6.4, Owner requests to rent shall be added to the priority list maintained pursuant to Section 6.4.5.

- 6.4.7 Reconsideration of Denied Request. If a request to rent is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board in accordance with Section 13.13 (“Owner Request for Hearing”). Within fifteen (15) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner.
- 6.4.8 Duration of Authorization to Rent, No Subletting. Except as to Lots grandfathered pursuant to Section 6.4.1 (“Grandfathered Lots”) and except as otherwise provided in the case of a hardship waiver granted pursuant to Section 6.4.2 (“Hardship Waivers”), once an Owner obtains permission to lease or rent a Lot, that Owner shall have the right to continue renting that Lot to consecutive lessees or renters or for consecutive terms without having to submit or re-submit a request to rent; provided (i) the continuing lease or rental is otherwise in compliance with the provisions of this Article 6, (ii) the lease or rental is without interruption of more than thirty (30) days, and (iii) during any interruption in rental the Owner shall not reoccupy the Lot for a period exceeding thirty (30) days. No subletting shall be permitted.
- 6.4.9 Decision of Board Conclusive. The decision of the Board in approving or denying a request to rent shall be final and conclusive.
- 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 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.
- 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 8.19 ("Assignment of Rents as Security for Payment"), or under the law. This Section 6.6 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded. 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 13 ("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. 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, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement 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.

ARTICLE 7 ARCHITECTURAL APPROVAL

- 7.1 Architectural Approval Required. Any Owner who wishes to make any alteration or addition that will affect the exterior of his or her Dwelling or Lot must obtain architectural approval pursuant to this Article 7 prior to making any such alteration or addition. The foregoing includes any building, fence, hedge or similar barrier, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind, any outdoor lighting, any mast, pole, tower, antenna, receiver, or transmitter, and any landscaping. No exterior addition or change or alteration shall be made, commenced, erected, painted, or installed within the Development, 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 Board. The foregoing shall not apply to improvements made or constructed by or on behalf of the Association.
- 7.2 Architectural Committee. The Board may appoint an Architectural Committee consisting of no fewer than three (3) and no more than five (5) Members of the Association at least one of whom shall be a Director. If an

Architectural Committee is appointed, it shall review all requests for approval and requests for preliminary consultation submitted in accordance with this Article 7 and provide recommendations to the Board concerning the same. The Board has the authority to accept, modify, or reject the Committee's recommendations and shall make the final decision on all requests for approval. The Committee shall also have such other duties and responsibilities as may be assigned by the Board. In the absence of a duly-constituted Architectural Committee, the Board shall perform the functions of the Committee.

7.3 Preliminary Consultation Prior to Submitting Application. Any Owner considering performing any work requiring the prior approval may apply to the Board, or to the Architectural Committee if one is appointed, for preliminary consultation by submitting preliminary plans or drawings of the contemplated work in accordance with the Architectural Guidelines. The purpose of the preliminary consultation procedure is to allow an Owner considering making substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for actual approval. Within forty-five (45) days after receiving a request for a preliminary consultation, the Board shall consider the preliminary information submitted and shall respond in writing to the Owner. The response shall give the requesting Owner such direction concerning the form and substance of an approval application for the contemplated work as the Board deems proper or desirable for the guidance of the Owner. The issuance of a preliminary consultation response by the Board shall not under any circumstances be deemed approval of any contemplated work; nor, once an Owner submits a request for approval, shall it preclude the Board requesting additional information about the proposed work based on the actual application.

7.4 Architectural Guidelines. Subject to the requirements of *Civil Code* section 1357.100 *et seq.*, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as "Architectural Guidelines." Architectural Guidelines shall set forth the standards for Board 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 Guidelines shall not be in derogation of any minimum standards required by this Declaration. Any Architectural Guidelines concerning the installation or repair of a roof shall comply with applicable law including *Civil Code* section 1353.7, if it applies.

7.5 Some Common Design Review Issues. The following provisions of this Section 7.5 shall not be deemed to limit the generality of the requirement to obtain architectural approval as provided in Section 7.1.

7.5.1 Window Coverings; Window Tinting. All drapes, window shades, and other window coverings installed in the windows of any Dwelling that are visible from the exterior of the Dwelling shall comply with any applicable Architectural Guidelines. In no event shall aluminum foil, newspaper, or similar materials be placed in windows. Any window coverings installed in compliance with the Architectural Guidelines may remain for the useful life thereof. When a Lot is purchased or sold, window coverings must be installed within ninety (90) days after close of escrow. Windows may be tinted; however, no reflective material may be used.

7.5.2 Room Additions, Patio Covers, Awnings, Storage Sheds. Room additions, patio covers, awnings, equipment storage sheds and similar exterior additions or modifications must comply with the Architectural Guidelines as to design, materials, and finishes.

7.5.3 Exposed Mechanical Equipment. Any installation of exterior mechanical equipment, such as air conditioning or swimming pool water filtration equipment, shall require prior architectural approval.

7.5.4 Solar Energy Systems. Solar energy systems as defined in *Civil Code* section 801.5(a)(1) and (2) are subject to prior architectural approval, provided that any Design Guidelines concerning solar energy systems shall be "reasonable" as defined in *Civil Code* section 714 and *Civil Code* section 714.1.

7.5.5 Poles, Antennas, Satellite Dishes. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained any where in the Development, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, or (iii) as specifically permitted by law. It is the intention of this Section 7.5.5 to restrict outside masts, towers, poles, antennas, and satellite receivers or transmitters in the Development to the fullest extent permitted by law and to authorize the Board to adopt and implement Architectural Guidelines regarding the same.

7.5.6 Exterior Repainting. All exterior repainting requires prior architectural approval.

- 7.5.7 Drainage Patterns. Each Owner is responsible for ensuring the original pattern of surface water drainage from the Lot is not altered so as to adversely affect another property.
- 7.5.8 Basketball Standards, Other Sports Apparatus. No basketball standard or fixed sports apparatus shall be placed upon or attached to any Lot or building without prior written architectural approval. Only a portable basketball standard may be used in the front yard of a Lot provided it is removed and stored in the backyard daily.
- 7.6 Written Request for Board Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 7, shall submit to the Board (or to the Committee if one is appointed) a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Board may require.
- 7.7 Fees. The Board 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.
- 7.8 Decisions To Be Made in Good Faith. An Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. It is recognized and intended that the Board will employ subjective criteria and judgments in its review of and determination concerning plans and proposals submitted to it. The Board 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 Board reasonably determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal submitted to the Board. The Board shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
 - (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Guidelines in effect at the time such plans were submitted to the Board;

- (c) The Board 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 Board 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.

7.9 Variances. The Board may grant reasonable variances or adjustments in order to overcome practical difficulties due to topography or other conditions unique to a particular Lot and to prevent unnecessary hardships in the application of the provisions of the Declaration; *provided, however,* that such variance or adjustment is in conformity with the intent and purposes of the Declaration and *provided further* that no such variance or adjustment shall constitute a waiver of such provision with respect to any future application whether for the same Lot or any other Lot.

7.10 Decisions In Writing. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within forty-five (45) days from the date of submission of a complete application to the Board. If a request is rejected, the decision shall include an explanation of the Board's decision.

7.11 Failure of Board to Make Timely Decision. If the Board shall fail to act on a request for approval within the time specified in Section 7.10, the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 1363.840, discussed in Section 13.16 (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.

7.12 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 7.16 ("Notice of Non-Conformity") as though the Board had given written notice of non-conformity with approved plans.

7.13 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 shall occur, in all cases, within one year 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 Board, 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 Board shall not grant an extension of time for commencement of the work if the Board finds that there has been a material change in the circumstances upon which the original approval was granted.

7.14 Completion; Force Majeure. The Owner shall complete all approved work within one 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 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 reconstruction after substantially total destruction of the improvements on a Lot within 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 Board of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 7.14, the Board shall be entitled to proceed in accordance with the provisions of Section 7.16 ("Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.

7.15 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 Board. Within forty-five (45) days after receiving notice of completion from the Owner, the Board or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval. If the Board fails to notify the Owner of any non-conformity within such forty-five (45) 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 7.16, (Notice of Non-Conformity"), as though the Board has given written notice of non-conformity with approved plans.

- 7.16 Notice of Non-Conformity. If the Board 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 forty-five (45) day period set forth in Section 7.15 ("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 Board or such longer time as the Board may designate in the notice.
- 7.17 Failure to Remedy Non-Conformity. If the Owner fails to remedy such non-conformity within the time specified in the notice of non-conformity, the Board shall then, pursuant to the procedures set forth in Section 13.12 ("Hearings Called by the Board"), 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 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, remove or remedy the non-conformity and all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.
- 7.18 Non-Waiver. The approval by 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.
- 7.19 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 that the Board 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 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 or its members seeking to recover any such damages.

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. 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 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 separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated CARRIAGE HILLS RESIDENTS' ASSOCIATION OPERATING ACCOUNT and CARRIAGE HILLS RESIDENTS' ASSOCIATION 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 Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.
- 8.7 Annual 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 Annual Assessment.
- 8.7.2 Allocation and Payment of Annual Assessment. The Board shall allocate and assess the Annual Assessment equally among the Lots by dividing the amount by the number of Lots

within the Development. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be due and payable on the first day of June each year.

8.7.3 Notice of Annual 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 Annual Assessment allocated to his or her Lot, except that if there is an increase in the Annual Assessment over the previous year, in compliance with *Civil Code* section 1366(d) the notice shall be mailed by first class mail to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Annual Assessment.

8.7.4 Application of Surplus Funds. 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 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, any other lawful disposition of such excess income shall be as determined by the vote of the Members.

8.8 Permitted Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more 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 Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence and to the extent required pursuant to *Civil Code* section 1366(b), 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.

8.9 Special Assessments.

8.9.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual 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.

8.9.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366(b), 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 1366(b), 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.

8.9.3 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

8.9.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 1366(d) notice shall be sent by first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

8.10 Reimbursement Assessments. The Board 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 Resident 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 Resident 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 5.4 ("Restriction on Businesses"), Section 5.11 ("Animals"), Section 6.6 ("Association As Third Party Beneficiary"), Section 6.7 ("Indemnification Regarding Tenant's Actions"), Section 8.19 ("Assignment of Rents as Security for Payment"), and Section 13.6 ("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 13.8 ("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 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual 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 Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 8.13 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.
- 8.14 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 times the amount of the bad check, as provided by statute.

- 8.15 Delinquent Assessments. Any Assessment or portion of an Assessment not received within thirty (30) days after its due date shall be delinquent and, to the fullest extent permitted by law including *Civil Code* section 1366(e), shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges.
- 8.16 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 1367.1(e), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 8.16.1 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 1367.1(a) ("Pre-Lien Notice").
- 8.16.2 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 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration) to the extent required pursuant to *Civil Code* section 1367.1(c)(1) 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 1367.1(c)(2).
- 8.16.3 Owner's Right To Discuss Payment Plan. To the extent provided in *Civil Code* section 1367.1(c)(3), 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.

- 8.16.4 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 1367.1(d) 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.
- 8.16.5 Delinquent Assessments of Less than \$1,800. To the extent provided in *Civil Code* section 1367.4, 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 1367.4(b)(1) or recording a lien as provided in *Civil Code* section 1367.4(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 13.16 of this Declaration) to the extent required by *Civil Code* section 1367.4(b)(2).
- 8.16.6 Initiating Foreclosure. As provided in *Civil Code* section 1367.1(g), 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 1367.4(c)(1), the Association shall offer to participate in Internal Dispute Resolution (Section 13.16 of this Declaration) or Alternative Dispute Resolution (Section 13.17 of this Declaration). To the extent required by *Civil Code* section 1367.4(c)(2), a decision to initiate foreclosure shall be made only by the Board in an executive session meeting.
- 8.16.7 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.

- 8.16.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 1367.4(c)(3), 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.
- 8.17 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.
- 8.18 Right of Redemption. To the extent provided pursuant to *Civil Code* section 1367.4(c)(4), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.
- 8.19 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 or in performance of any agreement under the Governing Documents including but not limited to those set forth in Article 6 ("Renting or Leasing"), to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may at any time, upon ten days written notice to such Owner, then (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) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and 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. The entering upon and taking possession of said property, 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 8.19 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.

- 8.20 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.
- 8.21 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.
- 8.22 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 recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; *provided, however*, that such Assessment lien shall be subordinate to the lien of any First Mortgage recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.
- 8.23 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.
- 8.24 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

9.2 Owner Responsibility for Maintenance.

- 9.2.1 Owner Responsibility for Lots Generally. 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.
- 9.2.2 Lots Along Castro Ranch Road. Each Owner of a Lot adjacent to the wall situated along Castro Ranch Road shall maintain and paint the surface of the wall that faces onto his or her Lot. Nothing shall be attached to the wall and nothing shall be done upon a Lot which may damage or undermine the wall.
- 9.2.3 Landscaping on Lots. Each Owner shall be responsible for providing landscaping and gardening (including periodic replacement, as the Board deems necessary, of trees, shrubs, and other plants) upon his or her Lot. All landscaping shall be maintained and cared for in a manner consistent with the standards of design and quality of other first class residential subdivisions in the City of Richmond. All landscaping shall be maintained in a neat and orderly condition, free of weeds or dead, dying or diseased plant matter. All lawns shall be neatly mowed and trees and shrubs shall be neatly trimmed.
- 9.2.4 Street Trees; Sidewalks; Curb Planting Areas. Each Owner shall maintain and replace as may be necessary the street tree (two trees in the case of corner Lots) as originally installed upon the Lot by the developer at the time of original construction. Each Owner shall also be responsible for repairing any damage to the sidewalk adjacent to his or her Lot that is occasioned by the roots of any tree upon the Lot.
- 9.2.5 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions 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 Shared Responsibility for Party Fences.

- 9.3.1 Party Fence Defined. Party Fence shall mean each fence built as part of the original construction of the Development and placed on or approximately on the boundary line between the Lots or between one or more Lots and the Common Area.

9.3.2 Party Fences Between Lots. The Owners of contiguous Lots that are separated by a Party Fence shall be responsible for maintaining, repairing, and replacing it. The costs of such maintenance, repair, and/or replacement shall be shared equally by the Owners; *provided, however*, that all costs of any maintenance, repair, or replacement necessitated by the negligent or willful action of an Owner (or any person for whom that Owner is responsible) shall be borne by that Owner. In the absence of negligent or willful misconduct, any necessary maintenance, repair, or replacement performed by an Owner shall entitle such Owner to the right of contribution from the other Owner or Owners of the Party Fence. The right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to such contribution.

9.3.3 Party Fences Between Common Area and Lots. In the case of a Party Fence situated between one or more Lots and contiguous Common Area, the Owners of the Lots and the Association shall be responsible for maintaining, repairing, and replacing it. The costs of such maintenance, repair, and/or replacement shall be shared equally by the Owner(s) and the Association; *provided, however*, that all costs of any maintenance, repair, or replacement necessitated by the negligent or willful action of an Owner (or any person for whom that Owner is responsible) or by the Association shall be borne by the responsible Owner or the Association, as the case may be. In the absence of negligent or willful misconduct, any necessary maintenance, repair, or replacement performed by an Owner shall entitle such Owner to the right of contribution from the Association and from any other Owner or Owners of the Party Fence but shall not entitle such Owner to offset any such contribution from the Association against any Assessment or other charge owed to the Association. Any material change in appearance of the existing fence shall require prior architectural approval pursuant to Article 7. Any maintenance, repair, or replacement performed by the Association shall entitle the Association to impose a Reimbursement Assessment upon the Owner(s) of the Lots contiguous to the Party Fence. The Owners' right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to such contribution.

9.4 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.

- 9.5 Owner Liability 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, including 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.
- 9.6 Limitation of Association Liability. Except as specifically provided in Section 9.3.3 ("Party Fences Between Common Area and Lots"), the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the willful misconduct or gross negligence of the Association, its employees, contractors, or agents.
- 9.7 Board Discretion To Require Maintenance. The Board shall have the discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property 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 13.12 ("Hearings Called by the Board"), cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

ARTICLE 10 INSURANCE

- 10.1 Insurance Coverage to be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

- (a) Hazard Insurance on Common Area - A policy or policies of all risk property insurance for all insurable Common Area Improvements, including fixtures and building service equipment against loss or damage by fire or other casualty, in an amount equal to one hundred percent (100%) of the current full replacement cost (without respect to depreciation) of the Common Area exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy. 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 replacement cost.
- (b) Liability Insurance - A combined single limit policy of public liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.;
- (c) Directors' and Officers' Insurance - directors' and officers' liability insurance with limits to be set by the Board but in no event less than those set forth in *Civil Code* section 1365.7. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.
- (d) Workers' Compensation Insurance - workers' compensation insurance to the extent necessary to comply with any applicable laws;
- (e) Fidelity Insurance - standard fidelity bond covering all officers and directors of the Association, the manager, and any employees of the Association in an amount which shall be determined by the Board and containing a waiver of any defense based on the exclusion of persons serving without compensation; and
- (f) Other Insurance - any other insurance and bonds as the Board may from time to time deem necessary or desirable.

10.2 General Provisions and Limitations of Insurance Policies. All insurance policies maintained by the Association shall be subject to and, where applicable, shall contain the following provisions and limitations:

10.2.1 Underwriter. All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.

10.2.2 Named Insured. Unless otherwise provided in this Section 10.2, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

10.2.3 Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

10.2.4 Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

10.2.5 General Provisions. To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following

- (a) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;
- (b) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- (c) That no policy may be cancelled, invalidated or suspended on account of the acts of any one or more individual Owners;
- (d) That no policy may be cancelled, invalidated or suspended on account of the conduct of any Manager, Director, officer, or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a

reasonable time within which the defect may be cured by the Association, its Manager, any Owner or Mortgagee;

- (e) That any "other insurance" clause in any policy excludes individual Owners' policies from consideration;
- (f) That no policy may be cancelled or substantially modified without at least ten days prior written notice to the Association;
- (g) An agreed amount endorsement; and
- (h) An inflation guard endorsement.

10.2.6 Term. The period of each policy shall not exceed three (3) years, provided the policy permits short rate cancellation by the insureds.

10.3 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 modified in its discretion. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

10.4 Insurance to Be Maintained By Owner. The insurance policies to be carried by the Association pursuant to Section 10.1 ("Insurance to be Maintained by Association") are not intended to cover the Lots or the Dwellings, any Owner's or Resident's personal property, or liability of an Owner incident to ownership or use of his or her Lot or Dwelling. Each Owner is responsible for obtaining hazard (fire) insurance for his or her own Lot and Dwelling, insurance for personal property, and liability insurance for the Owner's Lot, all at the Owner's own expense.

10.5 Coverage Not Available; Disclaimer. In the event any insurance policy or any endorsement listed in Section 10.1 ("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 Board shall notify the Owners of any material adverse changes in the Association's insurance coverage, as specified in the Bylaws. 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 10.1 because the

for the restoration of the Common Area making use of whatever funds are then available to it.

- 11.3 Restoration of Improvements on a Lot. If any Lot or any improvement on a Lot is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall restore the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or shall repair and rebuild the improvements and the Lot to such other condition as shall have been approved in advance by the Board pursuant to Article 7 (Architectural Approval"). Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and all such restoration or reconstruction shall be completed within the time specified in Section 7.14 ("Completion; *Force Majeure*"). In the case of total or substantially total destruction of a Dwelling, if restoration is not commenced within one 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 condition in compliance with applicable landscaping requirements.
- 11.4 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation be, 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 used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.
- 11.5 Condemnation of Lots. 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. If only a portion of such 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. 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 Reserve Fund. The Association shall maintain reserve funds in a reserve account which shall be sufficient to pay for maintenance, repair, and periodic replacement of Common Area improvements that the Association is obligated to maintain. This reserve fund shall be funded by Annual Assessments payable in installments rather than by Special Assessments; *provided, however,* that this provision shall not be deemed to limit the power of the Association to levy any type of assessment or charge authorized by this Declaration.
- 12.7 Management Contracts; Professional Management. Any agreement for professional management of the Development shall be for a term not to exceed three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.
- 12.8 Notices to Eligible Holders. Upon written request, including the name and address of the Eligible Holder and the address or Lot number of the Lot on which it holds a First Mortgage, an Eligible Holder is entitled to timely written notice of:
- (a) Any condemnation loss or casualty loss which affects either a material portion of the Development or of the Lot on which the Eligible Holder holds a First Mortgage;
 - (b) Any delinquency in the payment of Assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;
 - (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (d) Any default by an Owner-mortgagor of a Lot in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.
- 12.9 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.
- 12.10 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 Institutional Mortgagee.

12.11 Mortgagees' Right to Pay Taxes and Insurance Premiums. Institutional Mortgagees of individual Lots may, jointly or separately, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Upon demand, the Association shall execute an agreement in favor of all such First Mortgagees reflecting entitlement to such reimbursement.

12.12 Mortgagees' Rights to Insurance Proceeds or Condemnation Awards. No Owner or other party shall have priority over any right of Institutional Lenders in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of a Lot or the Common Area. Any provision to the contrary in the Governing Documents is to such extent void. All applicable insurance policies shall contain loss payable clauses acceptable to a majority of the affected Institutional Lenders, naming the Mortgagees as their interests may appear.

12.13 Mortgagee Consent for Termination of Development. Any election to terminate the legal status of the Development as a planned development shall require:

- (a) The approval of sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property; or
- (b) The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, if the election to terminate the planned development is for a reason other than that stated in Section 12.13(a), above.

12.14 Other Actions Requiring Mortgagee Consent. Except as provided by statute in the case of condemnation or substantial loss to Lots and/or Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission abandon, partition, subdivide, encumber, sell, or transfer any property or improvements owned, directly or indirectly by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and the Owners shall not be deemed a transfer within the meaning of this Section 12.14(a);
- (b) By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to architectural design or exterior appearance of the Lots, the exterior maintenance of the Lots, the maintenance of Party Fences, or the upkeep of lawns, plantings, or other landscaping in the Development;
- (c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost;
- (d) Use hazard insurance proceeds for losses to any property or improvements owned by the Association other than for the repair, replacement or reconstruction of the property and improvements.

12.15 Mortgage Protection. A breach of any of the covenants, conditions and restrictions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot; provided, however, that 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 13 ENFORCEMENT; NOTICE; HEARINGS

13.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance 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.

- 13.2 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.
- 13.3 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 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 13.3 are in addition to and shall not limit the generality of the provisions of Section 5.4.2 ("Indemnification Regarding Business Activity"); Section 5.11 ("Animals"); Sections 6.6 ("Association as Third Party Beneficiary"); Section 6.7 ("Indemnification Regarding Tenant's Actions"); and Section 7.19 ("Disclaimer of Liability").
- 13.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 13.5 Enforcement Rights Are Cumulative. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or, with respect to action by the Association, through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 13.6 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.

- 13.7 Limitation on Association's Disciplinary Rights. 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 8.19 ("Assignment of Rents as Security for Payment"). The provisions of this Section 13.7 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments as provided in Section 13.8 ("Imposing Sanctions").
- 13.8 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 13, 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.
- 13.8.1 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.
- 13.8.2 Monetary Penalties. The Board may impose monetary penalties or fines as Enforcement Assessments in accordance with a schedule adopted by the Board and distributed to the Members. Enforcement Assessments shall not exceed One Hundred Dollars (\$100.00) for each violation. Any increase in the maximum amount of the fine for each violation shall be deemed a Rule change pursuant to *Civil Code* section 1357.100 *et seq.*
- 13.8.3 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 month or until the continuing violation is remedied, whichever occurs sooner. 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.

13.8.4 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.

13.9 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.

13.10 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 13.11 ("Notices: Content, Delivery").

13.11 Notices: Content, Delivery, Address.

13.11.1 Content of Notice. Any notice of violation required or given under this Article 13 shall be in writing and shall, at a minimum, comply with any applicable statutes as to content and as to time and method of service. If no specific statutory requirements apply, any notice given by the Association to a Member 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.

13.11.2 Delivery of Notice. If no specific statutory requirements apply, any notice may be given by any method reasonably calculated to give actual notice to the affected Member or the Association, as the case may be; *provided, however*, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid and, 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.

13.11.3 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.

13.12 Hearings Called By the Board; Executive Session; Open Session.

Whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) and/or Resident(s) 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 1367.1(c)(2) 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 1378(a)(5). 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.

13.13 Owner Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("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 8.16.3 ("Owner's Right to Discuss Payment Plan"). If the Owner is requesting a hearing concerning a notice of violation sent pursuant to Section 13.10 ("Written Notice of Violation") or a notice of corrective action sent pursuant to Section 13.15 ("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 13.12 ("Hearing Called by the Board").

13.14 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.

13.15 Enforcement by Association in Emergency Situations.

13.15.1 Definition of Emergency Situation. For purposes of this Section 13.15, 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).

13.15.2 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 13.13 ("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.

13.16 Internal Dispute Resolution.

- 13.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 7 ("Architectural Approval") and of Section 13.9 ("Investigation of Complaints") through Section 13.15 ("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 California *Civil Code* section 1363.810 through 1363.850 (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 1363.820.
- 13.16.2 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 1363.840, 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 1363.830.
- 13.16.3 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* section 1369.510 *et seq.* 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

13.16.1 (“Fair, Reasonable, and Expedient Procedures”), then no party to the dispute may pursue a civil remedy that is subject to *Civil Code* section 1369.510 *et seq.*, without first complying with the “alternative dispute resolution” procedures set forth in that statute and referenced in Section 13.17 (“Alternative Dispute Resolution Before Initiating Lawsuit”).

13.16.4 Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process as part of the notice required by *Civil Code* section 1369.590.

13.17 Alternative Dispute Resolution Before Initiating Lawsuit.

13.17.1 When ADR Applies. The requirements of this Section 13.17 apply to civil action or proceedings as defined in *Civil Code* section 1369.510(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* section 116.220 and 116.221, all as provided in *Civil Code* section 1369.520(b). *Civil Code* sections 1369.510 *et seq.* apply to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 13.17 do not apply to Assessment disputes or to an action in small claims court.

13.17.2 Statutory ADR Process. In accordance with *Civil Code* section 1369.510 *et seq.*, 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 1369.510(a) and as the process is specified in *Civil Code* section 1369.530, 1369.540, and 1369.550.

13.17.3 Annual Summary of Alternative Dispute Resolution Process. In accordance with *Civil Code* section 1369.590, the Association shall annually provide the Members with a summary of the provisions of *Civil Code* section 1369.510 *et seq.* including the statement specified in *Civil Code* section 1369.590(a), and including a description of the Association’s internal dispute resolution process as required by *Civil Code* section 1363.850.


13.18 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

interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial thirty (30) year term or 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 Contra Costa County, California.

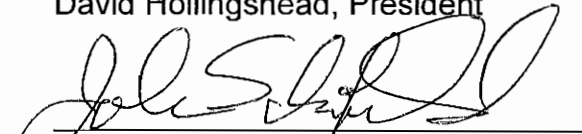
IN WITNESS WHEREOF, we, the Members of CARRIAGE HILLS RESIDENTS' ASSOCIATION, by the requisite vote of the Members, and by means of the signatures of the President and the Secretary, do hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Carriage Hills Residents' Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder of Contra Costa County, California.

DATED: 8/22/2011

CARRIAGE HILLS RESIDENTS'
ASSOCIATION



David Hollingshead, President



John Schofield, Secretary

EXHIBIT A

(Recital Paragraph B)

List of Recorded Documents Superseded by this Amended and Restated Declaration

1. Declaration of Covenants, Conditions and Restrictions of Carriage Hills, a Planned Development Project (Subdivision 6320), dated March 11, 1985, and recorded on March 18, 1985, in Book 12228, Pages 437 through 484, inclusive, Instrument/Series No.85-32325, Official Records of Contra Costa County, State of California;

Declarations of Annexation and Supplemental Restrictions

2. Declaration of Annexation and Supplemental Restrictions for Carriage Hills Phase II, executed July 22, 1985, and recorded July 24, 1985, as Series No. 85-96961, Official Records of Contra Costa County, State of California;
3. Declaration of Annexation and Supplemental Restrictions for Carriage Hills Phase III, executed July 22, 1985, and recorded July 24, 1985, as Series No. 85-96962, Official Records of Contra Costa County, State of California;
4. Declaration of Annexation and Supplemental Restrictions for Carriage Hills Phase IV, executed July 22, 1985, and recorded July 24, 1985, as Series No. 85-96963, Official Records of Contra Costa County, State of California;
5. Declaration of Annexation and Supplemental Restrictions for Carriage Hills Phase V, executed July 22, 1985, and recorded July 24, 1985, as Series No. 85-96964, Official Records of Contra Costa County, State of California;
6. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase I, executed June 10, 1987, and recorded September 16, 1987, as Series No. 87-195978, Official Records of Contra Costa County, State of California;
7. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase II, executed December 23, 1987, and recorded February 8, 1988, as Series No. 88-20902, Official Records of Contra Costa County, State of California;

8. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase III, executed February 24, 1988, and recorded February 26, 1988, as Series No. 88-33240, Official Records of Contra Costa County, State of California;
9. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase IV, executed February 24, 1988, and recorded February 26, 1988, as Series No. 88-33241, Official Records of Contra Costa County, State of California;
10. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase V, executed February 24, 1988, and recorded February 26, 1988, as Series No. 88-33241, Official Records of Contra Costa County, State of California;
11. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase VI, executed February 24, 1988, and recorded February 26, 1988, as Series No. 88-33243, Official Records of Contra Costa County, State of California;
12. Declaration of Annexation and Supplemental Restrictions for Carriage Hills II Phase VII, executed February 24, 1988, and recorded February 26, 1988, as Series No. 88-33244, Official Records of Contra Costa County, State of California.

EXHIBIT B

Steven S. Weil, Esq., State Bar No. 95564

BERDING & WEIL LLP

3240 Stone Valley Road West
Alamo, California 94507
Telephone: 925/838-2090
Facsimile: 925/820-5592

FILED

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Attorneys for Petitioner

CLERK OF THE SUPERIOR COURT
CONTRA COSTA COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

In the Matter of CARRIAGE HILLS
RESIDENTS' ASSOCIATION, a California
nonprofit corporation,

No. N11-0854

Petitioner,

**ORDER AND JUDGMENT GRANTING
PETITION TO AUTHORIZE APPROVAL
OF AMENDED AND RESTATED
DECLARATION OF COMMON INTEREST
DEVELOPMENT**

[Civil Code §1356]

Hearing Date: 7/21/11
Time: 9:00 a.m.
Dept: 31

CARRIAGE HILLS RESIDENTS' ASSOCIATION filed a Petition herein seeking issuance of an Order and Judgment to authorize approval of its Amended and Restated Declaration pursuant to Civil Code section 1356. The matter was set for hearing on July 21, 2011. Having considered the pleadings and papers in support and in opposition to the relief requested, the Court issued its tentative ruling granting the Petition. A copy of the tentative ruling is attached herein and incorporated by reference. No party having timely contested the tentative ruling, it becomes the ruling of the Court, and specifically:

It is ORDERED, ADJUDGED AND DECREED that:

1. The Petition on file herein complies with the requirements of Civil Code §1356;

and

2. Notice of these proceedings was given as required by prior Court Order; and

24. TIME: 9:00 CASE#: MSN11-0854

**CASE NAME: PETITION OF CARRIAGE HILLS RESIDENTS' ASSOCIATION
HEARING ON PETITION TO AUTHORIZE APPROVAL OF AMENDED AND
RESTATED DEC FILED BY CARRIAGE HILLS RESIDENTS' ASSOCIATION
* TENTATIVE RULING: ***

The Petition to Authorize Approval of Amended and Restated Declaration of Common Interest Development is granted. The opposing party challenges only the provision in the proposed CC&Rs which would limit the percentage of properties within the development that can be rented out to tenants to "not more than fifteen percent (15%) of the Lots [i.e., 66 lots]" within the development. However, the court finds that all the requirements in CC § 1356(c) have been met. In particular, Petitioner has shown that a reasonably diligent effort was made to permit all eligible members to vote on the proposed amendment, and owners having more than 50 % of the votes, voted to amend the CC&Rs. In addition, Petitioner has met its burden to show that the rental amendment is reasonable.

The reasonableness or unreasonableness of a condominium use restriction is to be determined not by reference to facts that are specific to the objecting homeowner, but by reference to the common interest development as a whole. *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal. 4th 361, 386. Courts do not conduct a case-by-case analysis of the restrictions to determine the effect on an individual homeowner, but must consider the reasonableness of the restrictions by looking at the goals and concerns of the entire development. *Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal. App. 4th 965, 975.

CERTIFICATE OF ACKNOWLEDGMENT

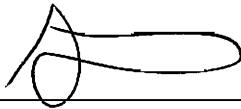
STATE OF CALIFORNIA)
)
) ss.
COUNTY OF Contra Costa)

On 8/22/11, before me, Steve McDermott, Notary Public, personally appeared John Schofield, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

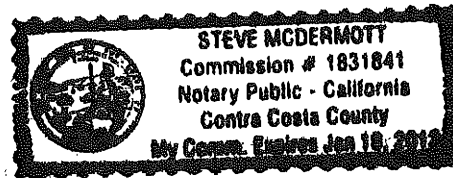
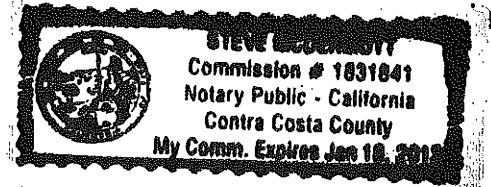
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



CERTIFICATE OF ACKNOWLEDGMENT

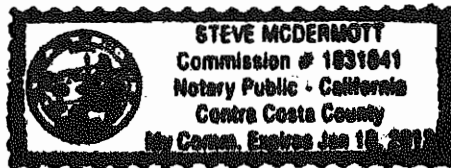
STATE OF CALIFORNIA)
)
COUNTY OF Contra Costa) ss.

On 8/22/11, before me, Steve Mc Dermott, Notary Public, personally appeared David Hollingshead, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



NOTARY SEAL DECLARATION

PURSUANT TO GOVT. CODE 27361.7, I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS DECLARATION IS ATTACHED READS AS FOLLOWS:

NAME OF
NOTARY:

Steve McDermott

COUNTY:

Contra Costa

COMMISSION
EXPIRES:

January 18, 2013

DATED:

September 23, 2011

Signature:

Robert Wetland

END OF DOCUMENT