

**SECOND AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS OF  
SUMMERSET AT BRENTWOOD III  
ASSOCIATION**

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## **RECITALS**

R1. Whereas, Summerset at Brentwood III Association executed its original "Declaration of Covenants, Conditions and Restrictions", which was recorded on July 15, 1999 in the Contra Costa County Recorder's Office as Document No. 99-186128 ("Original Declaration");

R2. Whereas Summerset at Brentwood III Association executed the "First Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Summerset at Brentwood III Association", which was recorded on September 29, 2011 in the Contra Costa County Recorder's Office as Document No. 2011-0201421-00 ("Prior Declaration") which fully amended, restated, and superseded the Original Declaration;

R3. Whereas, the Original Declaration, followed by the Prior Declaration established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property consisting of 464 separate interest residential Lots and the Common Areas located in the City of Brentwood, County of Contra Costa, State of California, more particularly described as follows:

The subdivision map of Brentwood Country Club, Subdivision 7940, filed for record on June 1, 1999, in Book 410 of Maps at Pages 35 through 69, inclusive, in the Official Records of the County of Contra Costa, State of California.

And also, all the property described in Exhibit "A" which is attached hereto and incorporated by reference here.

R4. Whereas, at least a fifty-one percent (51%) majority of the total voting power of the Association to amend, modify, change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens, and charges that were heretofore adopted under a general plan of improvement for the benefit of all of said Lots and Improvements and the Owners thereof and that are binding upon all parties having or acquiring any right, title, or interest in any or all parts of the real property described above;

R5. Whereas the Members of the Association do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens, and charges set forth in either the Original Declaration or the Prior Declaration described above, and any amendments and supplements thereto, if any, be and are hereby RESTATED in their entirety,

as set forth in this Second Amended and Restated Declaration of Covenants, Conditions & Restrictions of Summerset at Brentwood III Association;

R6. It is further hereby declared that all of the real property described herein constitutes a "Planned Development" within the meaning of Civil Code §4175;

R7. It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Second Amended and Restated Declaration of Covenants, Conditions & Restrictions of Summerset at Brentwood III Association, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof; and

R8. It is further hereby declared that all of the covenants, conditions and restrictions herein set forth herein shall constitute enforceable equitable servitudes as provided in Civil Code §5975 and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

NOW, THEREFORE, the Association hereby declares that all of the property described in Exhibit A shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of providing a means of managing the Development and of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Development or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

## **ARTICLE 1 DEFINITIONS**

1.1 "**Additional Charges**" shall mean costs, fees, charges, and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines and/or penalties.

1.2 **"Architectural Committee"** shall mean the committee created in accordance with Article 11 of this Declaration.

1.3 **"Articles"** shall mean the Second Amended and Restated Articles of Incorporation of Summerset at Brentwood III Association which are or shall be filed in the Office of the Secretary of State of California, as such Articles may be amended from time to time.

1.4 **"Assessment"** shall mean any Regular Assessment, Special Assessment, or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article 5 of this Declaration.

1.5 **"Association"** shall mean Summerset at Brentwood III Association, a California non-profit mutual benefit corporation, its successors, and assigns. The Association shall be governed by the Governing Documents.

1.6 **"Association Records"** shall mean the Governing Documents, Assessment schedule, delinquency policy, defect study, if any, budget, reserve summary, Special Assessment schedule, financial statement, lien policy and insurance information, all as required by Civil Code §4076 and §4078 or other comparable superseding statutes, interim unaudited financial statements, executed contracts, written board approval of vendor or contractor proposals, tax returns, check registers, reserve account balances and payments from those accounts, agendas and minutes of board meetings, committee meetings and member meetings and membership lists.

1.7 **"Association Rules"** or **"Rules"** shall mean the rules, regulations, and policies adopted by the Board of Directors, pursuant to Section 4.5, and Association Bylaws Article 8 as the same may be in effect from time to time.

1.8 **"Beneficiary"** shall mean and refer to a Mortgagee under a First Mortgage or a beneficiary under a first deed of trust encumbering a Lot.

1.9 **"Board"** or **"Board of Directors"** shall mean and refer to the governing body of the Association.

1.10 **"Bylaws"** shall mean the First Second Amended and Restated Bylaws of the Association which are or shall be adopted by the Association, as amended from time to time.

1.11 **"City"** shall mean the incorporated municipal City of Brentwood, in the County of Contra Costa, State of California, and its various departments, divisions, employees or representatives.

1.12 **"Cohabitant"** refers to persons who live together as legally married spouses, or persons who are domestic partners within the meaning of Family Code §297.

1.13 **"Common Area"** shall mean Parcels A, B, C, D, E, F, G, I, L, N, P, R, S and PP, as shown on the Map, unless the Association transfers title to any of these parcels in which case such transferred parcel shall no longer be considered Common Area. Common Area shall also mean all real property, owned by the Association for the common use and enjoyment of the Owners, which is not a Lot.

1.14 **"Common Expense"** shall mean use of the Association funds authorized by Section 4.8 hereof and Article 8 of the Bylaws and includes, without limitation: (1) all expenses or charges incurred by or on behalf of the management, maintenance, administration, insurance, operation, repairs, additions, alterations, or reconstruction of the Common Area, and any portions of the Lots that the Association is obligated to maintain or repair; (2) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors to the extent required by Article 9(i) hereof; (3) any amounts reasonably necessary for reserves for the maintenance, repair and replacement of the Common Area and any portions of the Lots that the Association is obligated to maintain or replace, and for the collection of any Assessments; and (4) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its function or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

1.15 **"Common Facilities"** or **"Common Facility"** shall mean the bocce courts, spa, tennis courts, guardhouse, community clubhouse, pool equipment area, swimming pool and apron area, pool furniture, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures, and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

1.16 **"County"** shall mean the County of Contra Costa, State of California, and its various departments, divisions, employees, and representatives.

1.17 **"Declaration"** shall mean this instrument, as it may be amended from time to time. The "Original Declaration" and "Prior Declaration" shall mean and refer to the documents referenced in the Recitals to this Declaration together with all amendments and annexations thereto adopted prior to adoption of this Declaration.

1.18 **"Declaration of Annexation"** shall mean any instrument recorded in the County which extends the provisions of this Declaration to the real property described in said Declaration of Annexation.

1.19 **"Development"** shall mean that real property more particularly described in **Exhibit "A"** attached hereto.

1.20 **"Duet Building"** shall mean each residential building constructed within the Development which contains two Residences.

1.21 **"Dwelling Unit"** shall mean a single-family home or duplex.

1.22 **"First Mortgage"** shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.

1.23 **"First Mortgagee"** shall mean the Mortgagee of a First Mortgage and any insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority, and the Department of Veteran's Affairs.

1.24 **"Eligible Holder"** shall mean any institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Lot encumbered by its Mortgage and requesting that the Association deliver written notice to it of any or all the events specified in Article 12 and Section 15.4 hereof.

1.25 **"Emergency"** shall mean an unforeseen combination of circumstances or the resulting state that calls for immediate action.

1.26 **"Enhanced Association Records"** shall mean Association Records and invoices, receipts, cancelled checks purchase orders, credit card statements, statements of services rendered, and reimbursement requests related to those Association Records.

1.27 **"Golf Course"** shall mean any portion of the overall Summerset at Brentwood project which is from time to time utilized for golf course purposes, including, without limitation, roughs, fairways, and greens.

1.28 **"Governing Documents"** is a collective term that shall mean and refer to this Declaration, the Articles, the Bylaws, and the Association Rules, all as amended from time to time.

1.29 **"Improvements"** shall mean all structures and improvements on the Development, including, but not limited to, buildings, paving, fences, signs, and landscaping.

1.30 **"Lot"** shall mean a Separate Interest as defined in Civil Code §4185 and shall mean Lots 1 through 180, inclusive, as shown on the Map or that are otherwise referenced on Exhibit "A" hereto or that are otherwise bound by the Declaration. The term "Lot" shall also mean any Lot described as such in a Declaration of Annexation. Lot includes all Improvements situated thereon or therein.

1.31 **"Majority of a Quorum"** shall mean the vote of the majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by casting written ballots equals or exceeds the minimum Quorum requirement for Member action, as specified in the Bylaws or by statute.

1.32 **"Map"** shall mean the subdivision map recorded as the subdivision map of Brentwood Country Club, Subdivision 7940, filed for record on June 1, 1999, in Book 410 of Maps at Pages 35 through 69, inclusive, in the Official Records of the County of Contra Costa, State of California, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded final map described in a Declaration of Annexation.

1.33 **"Member"** shall mean every person or entity who holds a membership in the Association.

1.34 **"Mortgage"** shall mean any security device encumbering all or any portion of the Development and shall include a deed of trust as well as a mortgage.

1.35 **"Mortgagee"** shall include a beneficiary or holder of a deed of trust as well as a mortgagee.

1.36 **"Owner"** shall mean and refer to the Record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Development, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation.

1.37 **"Party Fence"** or **"Party Wall"** shall mean any portion of a fence or wall which is constructed and placed approximately on the common boundary of two (2) or more Lots.

1.38 **"Party Roof Ridge"** shall mean any roof ridge which is constructed and placed approximately on the common boundary of two (2) Lots improved with a Duet Building.

1.39 **"Qualified Disabled Resident"** shall mean a disabled person or person with a disabling illness or injury who is a child or grandchild of the

Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness, or injury. A "disabled" person shall mean a person with a disability as defined in Civil Code §54(b). A "disabling injury or illness" shall mean an illness or injury that results in a condition meeting the definition of disability in Civil Code §54(b).

1.40 "**Quorum**" shall mean a majority of the Voting Power of the Association.

1.41 "**Resident Advisory Committee**" shall mean the committee created in accordance with Article 13 of this Declaration.

1.42 "**Record**" shall mean, with respect to any document, the recordation or filing of such document in the Office of the County Recorder.

1.43 "**Regular Assessment**" shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 5.5 below.

1.44 "**Residence**" shall mean a residential dwelling situated on a Lot, including any attached garage also situated on a Lot.

1.45 "**Senior**" or "**Senior Citizen**" shall mean a person residing in a Residence who is fifty-five (55) years of age or older.

1.46 "**Senior Housing Development**" shall mean a residential development as defined in Civil Code §51.3(b)(4).

(a) "**Cohabitant**" shall mean a person who lives together with a Senior, as husband and wife or persons who are domestic partners within the meaning of Family Code §297.

(b) "**Health Care Assistant**" shall mean a person hired and compensated to provide live-in, long-term, or terminal health care to a Senior.

(c) "**Qualified Permanent Resident**" shall mean a person who satisfies both of the following requirements: (a) the person either was (i) residing in the Residence with the Senior Citizen before the Senior Citizen's death, hospitalization, or other prolonged absence or before the dissolution of marriage with the Senior Citizen and has an ownership interest in or is in expectation of an ownership interest in the Residence or (ii) currently resides in the Residence with a Senior Citizen; and (b) the person is the spouse or Cohabitant of the Senior Citizen, a person providing primary physical or economic support to the Senior Citizen or is at least forty-five (45) years or older. For purposes of this Declaration, the term "prolonged absence" shall mean

a qualifying resident or senior citizen who is absent for at least ninety (90) consecutive calendar days.

1.47 **"Single Family Residential Use"** shall mean occupancy and use of a Lot for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings. Nothing herein contained shall be construed as requiring any family relationship among the persons occupying a Lot.

1.48 **"Special Assessment"** shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 5.6 below.

1.49 **"Special Individual Assessment"** shall mean an Assessment levied against an Owner and his or her Lot in accordance with Section 5.7 below.

1.50 **"Voting Power"** shall mean all Members who are entitled to vote for the election of Directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at the time any determination of voting power is made.

## **ARTICLE 2 PROPERTY RIGHTS AND EASEMENTS**

### **2.1 Persons Subject to Governing Documents**

All present and future Owners, tenants, and occupants of Lots within the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease, or contract of sale with respect to any Lot, or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant, or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon him or her and that he or she will observe and comply with the Governing Documents.

### **2.2 Owners' Easements of Enjoyment**

Every Owner shall have a right and easement of enjoyment in and to the Common Area within the Development, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) The right of the Board to adopt reasonable rules and regulations (the "Association Rules") for the benefit of all Members regarding the

use and enjoyment of the Development, as provided in Section 4.5 hereof and in the Bylaws;

(b) The right of the Association to enforce the Governing Documents, including, without limitation, the Association Rules and to levy monetary fines, or to suspend voting rights after notice and an opportunity to be heard by the Board in accordance with Article 6 below;

(c) The right of the Association to sell any Lot owned by the Association and apply the proceeds of any such sale first to the outstanding liens and charges against the sold Lot, if any, and then transfer the remainder of the proceeds of the sale to the reserve fund;

(d) The right of the Association, in accordance with its Articles of Incorporation, Bylaws and with the written consent of a majority of the Voting Power of the Association, to borrow money for the purpose of improving the Common Area and any facilities thereon. The Association may borrow funds for the purpose of improving or repairing the Common Area, performing any obligations it has, or maintaining or repairing individually owned property by securing the Association's obligation to the lender with the Members' future obligation to pay Assessments, as long as the Association complies with all provisions regarding Special Assessments where a Special Assessment will be necessary to obtain or repay the loan; and

(e) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Common Area.

### **2.3 Right of Entry for Repairs and Maintenance**

Without limiting the foregoing description of powers, but in addition thereto, the Association and/or its agents shall have the right, when necessary, to enter into any Lot to perform the Association's obligations under this Declaration, including:

(a) repair and/or maintenance of any Common Area;

(b) obligations to enforce the architectural and land use restrictions of Article 3 and Article 11 hereof; and

(c) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

## **2.4 Limitation on Exercise of Right of Entry**

The Association's right of entry pursuant to Section 2.3 shall be subject to the following:

(a) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(b) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(c) In all non-emergency situations involving access by the Association for the purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Article 6 below.

## **2.5 Encroachment Easements**

Each Lot and its Owner shall have and is granted an easement over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other cause as long as the encroachment remains. However, in no event shall a valid easement for encroachment exist in favor of an Owner if the encroachment occurred due to willful misconduct of the Owner. Each Lot and its Owner shall have and is granted an easement, appurtenant to such Lot over each adjoining Lot, as the case may be, for overhanging roofs and eaves, fireplace structures, and other structural components as originally constructed by or, if partially or totally destroyed, as subsequently rebuilt, or repaired in accordance with the original plans and specifications. Each Lot and its owner including Duet Building Owners shall have an easement over and across such portions of the contiguous Lot as are necessary to paint, repair or maintain portions of the exterior of said Lot or Residence.

## **2.6 Blanket Utility Easement**

There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewers, gas,

telephones, drainage, and electricity. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated within the Development except as initially designed or thereafter approved by the Board of Directors. The easements provided for in this Section shall in no way affect any other recorded easement on the Development.

## **2.7 Other Easements**

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

## **2.8 Golf Course Access**

The Common Area shall be conveyed to the Association subject to a non-exclusive right and easement appurtenant to the Golf Course for ingress and egress by the owner of the Golf Course and its members, licensees, guests, and employees, including access by maintenance vehicle, over, upon and across the private drives situated within the Common Area. The Association may not unreasonably restrict rights of ingress and egress to the Golf Course or impose any restrictions, limitations, or requirements for entry into the Development which are not imposed and enforced against all residents and guests. The Board may adopt reasonable Association Rules relating to the right of entry through the gate but none discriminating against or restricting entry by Owners, invitees, or prospective purchasers of Lots invited by an Owner.

## **2.9 Golf Ball Intrusion and Watering Overspray**

The Common Area and each Lot shall be conveyed subject to a non-exclusive right and easement appurtenant to the Golf Course for purposes of overspray in connection with the watering of the roughs, fairways, and greens on the Golf Course and for the intrusion of golf balls from the roughs, fairways, and greens. Any person or entity for whose benefit the right and easement for overspray and intrusion is reserved shall not be liable to any Owner or the Association for any damage to person or property occasioned by such overspray or intrusion unless occasioned by the intentional act of such person. The rights and easements reserved by this Section shall be for the benefit of the owner of the Golf Course, its successors and assigns and for the benefit of their employees, contractors, agents, guests, invitees, licensees, or members (collectively referred to as "beneficiaries"). By acceptance of a deed to a Lot, each Owner (i) acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include the risk of damage to property or injury to persons and animals from golf balls, and (ii)

assumes such risks, releases and agrees to indemnify and hold harmless beneficiaries from and against any and all liability from damage or injury caused by golf balls which intrude in, on or around the Owner's Lot or Residence.

## **2.10 Priority of Easements**

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

## **2.11 Conveyance of Lot**

The corresponding appurtenant easements described in this Article 2 shall automatically accompany the conveyance of any Lot, even though the description of the instrument of conveyance may refer only to the fee title to the Lot.

## **2.12 Painting**

Each Owner of a Lot on which a Duet Building is situated shall have a non-exclusive right, and easement over and across such portions of the contiguous Lot as are necessary to paint the portions of the exterior of the Duet Building which the Owner is required or permitted to repaint in accordance with Section 7.3, below.

## **2.13 Party Fences**

Each Owner of a Lot containing a Party Fence shall own that portion of the fence from the surface which faces the Owner's Lot up to the center of the Party Fence and shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as are necessary to maintain the Party Fence.

## **2.14 Storm Drains**

There are reserved and granted for the benefit of each Lot and the Common Area over, under, across and through the Development, except for portions of the Development on which a structure is situated, non-exclusive easements for surface and subsurface storm drains and the flow of storm waters in accordance with natural drainage patterns and the drainage patterns and Improvements originally installed or constructed. Drainage shall include but not be limited to catch basins, or other underground drainage improvements, drainage, swales, surface and subsurface water, roof, and gutter run-off. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or flow of drainage.

## **2.15 Support, Maintenance and Repair**

The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Lots through each Lot and the Common Area for the support, maintenance and repair of the Common Area and all Lots.

## **ARTICLE 3 USE OF PROPERTY AND RESTRICTIONS**

### **3.1 Single Family Residential Use**

The use of the individual Lots in the Development is hereby restricted to Single Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. Notwithstanding the foregoing, a home office is permitted within a Residence as long as it

- (a) is permitted by local ordinance;
- (b) does not interfere with parking, vehicular traffic or pedestrian traffic; and
- (c) does not create a nuisance as described in Section 3.176 (Prohibition of Noxious Activities).

### **3.2 Lease or Rental of Lots**

No Owner shall be permitted to lease his or her Lot for transient or hotel purposes (which includes, without limitation, a rental that includes providing the occupants with a customary hotel service such as room service or maid or housekeeping service). Any lease or rental of a Lot shall be in writing for a term of not less than 30 days and shall provide that its terms are subject in all respects to the Association's Governing Documents, and the actions of the Board. The breach of any provision in the Governing Documents shall be a breach of the lease. The Owner of any such Lot shall certify in writing that the tenants satisfy the requirements of Section 3.3 (Age Restriction Occupancy Requirements).

- (a) All leases for a Lot within the Development shall be in writing. Subleasing of a portion of a Lot is not permitted.
- (b) Owners of Lots shall disclose to potential buyers the existence of the rental restriction provisions set forth in this Section. Each Owner shall notify the Association Manager, or the person designated in the annual policy statement to receive official communications on behalf of the Association, if not the Association manager, of the names of any tenant or lessee of the Owner's Lot.

(c) Discipline of Lessors and Lessees.

3.2.1 Lessor's Responsibility for Tenant. An Owner who leases Owner's Lot to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents, including but not limited to, all Association Rules, restrictions, easements, reservations, assessments, liens, and charges created in accordance with this Declaration, all as amended and supplemented from time to time during the tenant's or lessee's occupancy and use of the Lot.

3.2.2 Fine or Penalties for Violations of Governing Documents by Tenants. Subject to the notice and hearing requirements set forth in Article 6 of this Declaration, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of fines and penalties against the Owner. Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment. If the Association prevails in any legal action to remedy a tenant's violation of the Governing Documents, the Owner shall be responsible for paying the Association's costs for any such litigation, including reasonable attorneys' fees and costs. If a Special Individual Assessment may be imposed as a result of the conduct of a renter or lessee, any renter or lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled under Article 6 of this Declaration.

3.2.3 Discipline of Lessees. The Association may, after the notice and hearing required in Article 6 of this Declaration, deprive any lessee who is in violation of the Governing Documents of the right to use the Common Area including the Common Facilities. Furthermore, whether or not such right is stated in any rental agreement, every Owner who rents his or her Lot automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board brings such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorneys' fees and costs, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder shall only arise if the tenant's or lessee's conduct involves repeated or continuing damage to or destruction of Common Areas or Common Facilities or constitutes a continuing nuisance or unreasonable interference with safety and/or the quiet enjoyment of other Residents.

### **3.3 Age Restriction Occupancy Requirements**

**3.3.1 Housing for Senior Citizens.** This Development is designed to provide housing for Senior Citizens and is intended to qualify as a senior citizen housing development within the meaning of Civil Code §51.3(b)(4). On commencement of occupancy of the Dwelling Unit, at least one resident must be a Senior Citizen, at least 55 years of age or older, who intends to reside in the Dwelling Unit as his or her primary residence on a permanent basis. All other residents must qualify under one of the following categories:

- (1) the resident is age 45 or older;
- (2) the resident is the spouse of the Senior Citizen;
- (3) the resident and the Senior Citizen are Cohabitants;
- (4) the resident is providing the primary physical or economic support to the Senior Citizen;
- (5) the resident is a Qualified Disabled Resident; or
- (6) the resident is a Permitted Healthcare Resident.

On the death or dissolution of marriage or on hospitalization or other prolonged absence of the Senior Citizen, a Qualified Permanent Resident or Qualified Disabled Resident may continue to reside in the Dwelling Unit as long as at least eighty percent (80%) of the occupied Residences in the Development are occupied by a person age fifty-five (55) or older and the continued occupancy by the Qualified Permanent Resident or Qualified Disabled Resident does not reduce the percentage to less than eighty percent (80%) so as to disqualify the Development as "housing for older persons" under applicable state or federal law.

**3.3.2 Termination of Disability.** For anyone who is a Qualified Disabled Resident, and the disabling condition ends, and the Qualified Disabled Resident does not otherwise qualify to reside in the Dwelling Unit under subsection (a), the Board may require the formerly disabled resident to cease residing in the Development on receipt of six months' written notice; the Board may, however, allow the person to remain a resident for up to one year after the disabling condition ends.

**3.3.3 Occupancy by a Permitted Healthcare Resident.** A Permitted Healthcare Resident may occupy a Dwelling Unit during any period that the Permitted Healthcare Resident is actually providing live-in, long-term, or terminal healthcare to the Senior Citizen for compensation. Compensation shall include provisions of lodging and food in exchange for care. A Permitted Healthcare Resident shall be entitled to continue his or her residency if the

Senior Citizen is absent from the Dwelling Unit on satisfaction of each of the following conditions:

- (1) The Senior Citizen became absent owing to hospitalization or other necessary medical treatment and expects to return to the Dwelling Unit within 90 days after the date the absence began; and
- (2) The absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Dwelling Unit.

3.3.4 Temporary Residency. Nothing in this Section shall prohibit the temporary residency of any person under age 55 as a guest of the Senior Citizen or Qualified Permanent Resident. "Temporary residency" shall mean occupancy of a Dwelling Unit for no more than 60 days in any consecutive 12-month period.

3.3.5 Federal Law Requirements. The Development is also intended to qualify as "housing for older persons" exempt from the age restriction prohibition in the Federal Fair Housing Amendments Act of 1988 as amended by the Housing for Older Persons Act of 1995 (the "Acts"). To meet the requirements of the Acts, at least 80 percent of the occupied dwellings must be occupied by at least one person age 55 or older; and the Association shall:

- (1) publish and adhere to policies and procedures that demonstrate an intent by the Association to provide housing for persons age 55 or older; and
- (2) adopt and implement procedures for the periodic verification of compliance with the age restrictions, including procedures for routinely determining the occupancy of each Lot, including the identification of whether at least one occupant is a Senior Citizen. The procedures shall provide for regular updates at least once every two years.

3.3.6 Applicable Law and Amendment Requirements. The provisions in this Section are intended to comply with the housing for Senior Citizen requirements in Civil Code §51.3 and the housing for older persons exemption under the Acts of 1988 and 1995 in effect as of the date this Declaration was recorded in the records of the County. In the event of any conflict between this Section and applicable law regulating age restrictions in senior housing developments, the applicable law shall control. If the applicable law is subsequently modified or amended in any manner, this

Section shall automatically be considered modified and amended in a like manner as necessary to remain in compliance with applicable laws.

### **3.4 Parking**

Vehicles shall not be parked anywhere in the Development except in areas designed and established for the parking of passenger motor vehicles or wholly within garages or driveways. All parking areas shall be used solely for the parking of motor vehicles used for personal transportation. Garage doors shall remain closed except when entering or leaving the garage. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the garage was designed. No part of the Common Area or members' driveway shall be used for the repair, construction, or reconstruction of any vehicle. No resident shall park in areas designated as "guest" or "visitor" parking. The Board is authorized to adopt Rules further regulating vehicles and the parking of vehicles within the Development. Included among the Board's rights of enforcement within the Development is the right to tow a vehicle, so long as such towing is in compliance with applicable Vehicle Code provisions.

### **3.5 Vehicle Restrictions**

Motor homes, campers, trailers, and recreational vehicles may be permitted within the Development for limited periods as described in the Association Rules. No boat, commercial vehicle, truck (other than a standard size pickup truck) or inoperable automobile or similar equipment shall be permitted to remain upon any area within the Development. As used herein, "commercial vehicles" shall not include sedans or standard size pickup trucks.

### **3.6 Signs**

All signs displayed in the Development shall be attractive and compatible with the design of the Development and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area in the Development shall be as follows:

- (a) One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent;
- (b) Appropriate signs may be displayed by the Association to identify the Development;
- (c) Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board;
- (d) Signs required by legal proceedings may be displayed;

(e) Political signs may be displayed for a period of forty-five (45) days prior to and five (5) days following the election to which they relate in accordance with local ordinances; and

(f) Non-commercial signs allowed by the California Civil Code and by local ordinances may be displayed.

### **3.7 Flags**

Owners and their tenants shall have the legal right to display a flag on the Owner's Lot, subject to the following:

(a) The size of the flag shall not exceed three (3) feet by five (5) feet;

(b) The height of the flagpole, if any, shall not exceed the maximum limit set by local ordinances;, and

(c) The use and display of the flag shall follow all the United States' governmental guidelines regarding the use and display of the American flag.

### **3.8 Household Pets**

The following restrictions regarding the care and maintenance of household pets within the Development shall be observed by each Owner, resident, or guest:

(a) Each Owner may also maintain a reasonable number of domestic cats and/or dogs, as well as birds and fish. No other animals or pets are permitted in the Development. The Board shall have the right to prohibit the maintenance of any pet which, after notice and hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes.

(b) Household pets shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners or other responsible person.

(c) Pet owners shall be responsible for the prompt removal and disposal of pet waste deposited by their pets within the Development.

(d) Each person bringing or keeping a pet on the Development shall be solely responsible for the conduct of his or her pet(s). The Association, its Board, officers, employees, and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board shall have the right to establish and enforce additional Rules and impose standards for the reasonable control and keeping of household pets in, on, and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

(f) Dogs shall not be allowed outside of a Lot within the Development unless leashed and otherwise under the supervision and restraint of their owners. No household pet shall be tied, chained, or otherwise tethered in the Common Area, whether supervised or unsupervised.

### **3.9 Garbage**

No rubbish, trash, or garbage shall be allowed to accumulate on Lots. All garbage, trash and recyclables shall be placed in trash containers located in designated garbage enclosures. Trash containers may be placed on Common Area or where visible only on the night before and the day that pick-up is to occur. Any extraordinary accumulation of rubbish, trash, garbage, or debris (such as debris generated upon vacating the premises or during the construction of modifications and Improvements) shall be removed from the Lot or Common Area to a public dump or trash collection area by the Owner or tenant at his or her expense. The Board may adopt Rules applicable to the provisions of this section, and the Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

### **3.10 Antennas**

Installation of a radio, video, or television antenna, including a satellite dish, designed to receive television signals that is or will be located on property within the exclusive use or control of the antenna user, and that is not otherwise prohibited by law, must be within applicable requirements of Civil Code § 4725 and the Code of Federal Regulations, 47 CFR §1.4000, or comparable superseding statutes and regulations. As allowed by applicable law, the Board may request notification prior to the installation of such radio, video, or television antenna, including a satellite dish. The Board may disallow the installation of antennas or satellite dishes with a diameter or diagonal measurement exceeding three (3) feet, or with a height above a roof line so that, if it topples, it would not be wholly contained within the Owner's Lot. As allowed by applicable law, the Board may disallow the installation of antennas or other devices that are not designed to receive television signals. As allowed by applicable law, the Board may enforce reasonable painting or other camouflage requirements, provided such requirements do not impair reception or place an unreasonable financial burden on the Owner. As allowed by applicable law, the Board may establish and enforce collection powers that allow the Association to recover for any

resulting Association property damage and other costs arising from harm caused by an Owner's installation of such installed antennas or satellite dishes. Such powers of the Board to levy a Special Individual Assessment are pursuant to Section 5.7 below. As allowed by applicable law, the Board may establish and impose penalties on Owners who violate this Section and applicable Rules.

### **3.11 Machinery and Equipment**

No machinery or equipment of any kind shall be placed, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Lot or appurtenant structures within the Development.

### **3.12 Diseases and Pests**

No Owner shall permit anything or condition to exist on his or her Lot which shall induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

### **3.13 Drainage**

No Owner shall impede, alter, or otherwise interfere with the drainage patterns and facilities in the Development until plans have been submitted and approved pursuant to Article 11 and any public authority having jurisdiction thereof. This Declaration provides notice to each Owner to devote great care and attention to grading and to establish or maintain POSITIVE DRAINAGE AWAY from the entire foundation line of the Owner's Residence. Positive drainage is achieved by shaping Lot grades, establishing drainage "swales", or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water AWAY from the foundation, and the rear, side, and front of the Residence to offsite drainage disposal. Swales also prevent drainage water from moving across a Lot to another Lot or Common Area. This Declaration also provides notice to each Owner that if existing drainage swales established on your Lot and around your Residence are interrupted, blocked, filled, or otherwise altered, SERIOUS DAMAGE can result. Drainage must not be allowed to pond in a yard or run against or under a Residence, foundation, garage floor, driveway, or other Improvements. SERIOUS DAMAGE may result even during a short period of time. If a Residence has a roof gutter system and downspouts which are directly connected to the Development's storm drainage system, the Residence shall at all times remain so connected to the Development storm drainage system; the Owner of such a Residence may not alter the Residence in any manner which results in additional roof waters draining anywhere other than directly into the Development's storm drainage system.

### **3.14 Landscaping**

All landscaping within the Development, including on the Lots, shall be maintained in a neat, attractive, and orderly condition. Lot Owners shall promptly remove and/or replace, as needed, any weeds or diseased or dead lawn, trees, ground cover or shrubbery within the Lot. Lot Owners shall neatly mow all lawn areas in their Lots and ensure all trees and shrubs within same are neatly trimmed. Lot Owners shall regularly inspect and maintain all irrigation systems within their Lots. The foregoing provisions do not apply to landscaping installed on the Golf Course.

### **3.15 Recreational Facilities**

(a) Every Member of the Association shall have a right to use the recreational facilities situated on the Common Area, subject to the following provisions:

(1) The right of the Association to deny use after hearing for violation or infringement of the Governing Documents, including for nonpayment of Assessments and fines.

(2) The right of the Association to set reasonable Rules as to the use of the recreation building, pool, tennis courts, bocce ball courts, work out room and other facilities, including time of day each facility is available for use. Guests may use recreational facilities when they are accompanied by a Member and satisfy the age requirements. No pets are allowed within the recreational facilities.

(b) Any Owner may delegate, in accordance with the Governing Documents, the right of enjoyment to the recreational facilities to their tenants who reside in the Development. By delegating this right of enjoyment, the Owner may not use the recreational facilities during the period of this delegation.

### **3.16 Prohibition of Noxious Activities**

No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Development which is or can become an unreasonable annoyance, embarrassment, or nuisance to neighboring property Owners, residents, tenants, the Board, Association agents and service providers, and/or employees in a way that interferes with one's use and enjoyment of their Lot and/or the Common Areas; provided, however, that the Board may decline to involve itself or the Association in disputes concerning adjacent Lot Owners (or their residents) if such dispute does not involve the Common Area or any other Owner or resident of the Development and if the Board determines that in view of the possible expenditure of time, efforts, and

costs involved in attempting to resolve the dispute, that it would not be in the best interests of the Association to become involved. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot which would unreasonably disturb any other Owner's, guest's, or tenant's enjoyment of his or her Lot. In addition, the following activities are prohibited and shall not be performed anywhere upon or within the Development:

- (a) Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association.
- (b) Activities that are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development.
- (c) The emission of unreasonable levels of exhaust fumes and/or noise and/or the parking or storage of dilapidated, unlicensed, non-operational, and/or disabled vehicles.
- (d) Harassment or physical or verbal abuse of the Directors, or the Association's contractors, employees, agents, and Association manager, or any obstruction or interference with such persons while they are performing duties for the Association.

### **3.17 Temporary Structures**

Subject to local ordinances, no structure of a temporary character, trailer, mobile home, camper, tent, shack, shed, garage, or other outbuilding shall be used on any Lot at any time, either temporarily or permanently.

### **3.18 Alterations**

No Alteration of Improvements may be undertaken on a Lot within the Development without prior approval of the Architectural Committee pursuant to Article 11 hereof. Additional certification as required by the Architectural Committee shall be provided at the Owner's expense. As used herein, the term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and/or changing the color or shade of any Improvement. The term "Alteration" does not include repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade, repairing any Improvement with the same materials, or modifying the interior of a Residence.

### **3.19 Business Activities**

No businesses may be conducted from Lots within the Development which would require rezoning or application for a conditional use permit under the County of Contra Costa General Plan and related City or County ordinances.

### **3.20 Burning**

There shall be no exterior fires except those contained within receptacles designed for such purpose. Each Lot Owner must comply with all applicable County ordinances regarding burning of any materials.

### **3.21 Activities Affecting Insurance**

Nothing shall be kept in or on any Lot which might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in or on his or her Lot which is in violation of any law, ordinance, statute, rule, or regulation of any local, city, county, state, or federal body.

### **3.22 Solar Energy Systems**

An Owner wishing to install a solar energy system anywhere on that Owner's Lot must obtain the prior approval of the Architectural Committee pursuant to the procedures set forth in Article 11 (Architectural Control). The Architectural Committee, however, reserves the right to require an Owner to install an alternative solar energy system where the proposed solar energy system interferes with the Development's aesthetics. However, consistent with California Civil Code Section 714 and Section 714.1, the Architectural Committee shall not require an Owner to install an alternative solar energy system that unreasonably

- (a) increases the cost or
- (b) decreases the energy efficiency of the originally proposed solar energy system.

If the installation of the solar energy system requires penetration of any Common Area Improvement, the Association and Owner shall enter into a separate agreement which shall, among other things:

- (a) cause the Owner to indemnify the Association, the Board, and the Architectural Committee, and all members of each of the aforementioned entities; and
- (b) cause the Owner to reimburse the Association for any and all costs associated with loss or damage to any Common Area or other Lots

resulting from the installation, maintenance, and/or use of the Owner's solar energy system.

### **3.23 Fencing**

Fencing on Lots is generally discouraged but may be permitted with the approval of the Architectural Committee. The Architectural Committee may establish a specific design standard or standards for any fencing approved by the Architectural Committee. Except for fencing originally constructed, there shall be no fencing constructed, maintained, or placed anywhere in the Development within twenty-five (25) feet of any portion of the Golf Course or which unreasonably interferes with the view from the Golf Course (the owner of the Golf Course is permitted to construct fencing anywhere on the Golf Course, including a boundary separating the Golf Course from a Lot or Common Area). For purposes of this Section, fencing includes fences, walls, netting, and other similar barriers, including landscaping-

### **3.24 Golf Course Appearance**

Each Owner acknowledges and agrees that neither any Owner nor the Association shall have any right to compel the owner of the Golf Course to maintain the Golf Course or any Improvements thereon to any particular standard of care and that the appearance of the Golf Course and Improvements shall be determined in the sole discretion of the owner of the Golf Course.

### **3.25 Golf Course Cart Paths**

Portions of the golf cart path system may be situated on the Common Area. No Owner or invitee shall have any right to use any portion of the golf cart path system, on golf course property, without the prior approval of the owner or manager of the Golf Course.

### **3.26 Golf Course Entry**

Neither any Owner nor the Association shall have any right of entry onto the Golf Course without the prior written consent of the owner or manager of the Golf Course. Neither any Owner nor the Association may permit any irrigation water to overspray or drain from their property onto any portion of the Golf Course except through storm drainage Improvements constructed. Neither any Owner nor the Association may permit any fertilizer, pesticides, or other chemical substances to overspray, drain, flow or be disposed of in any manner upon the Golf Course. If the Association or any Owner violates the provisions of this Section, they shall be liable to the owner of the Golf Course for all damages to the turf resulting from their violation and all damages including consequential damages suffered by the owner of the Golf Course.

### **3.27 Golf Course Residence Near To**

By acceptance of a deed to a Lot, each Owner acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include

- (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Lot or other portion of the Development utilized by the Owner,
- (b) the entry by golfers onto Common Property to retrieve golf balls,
- (c) overspray in connection with the watering of the roughs, fairways, and greens on the Golf Course,
- (d) noise from golf course maintenance and operation equipment (including, without limitation compressors, blowers, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously),
- (e) odors arising from irrigation and fertilization of the turf situated on the Golf Course, and
- (f) disturbance and loss of privacy resulting from golf cart traffic and golfers.-

Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the Golf Course throughout the year and that reclaimed water, treated wastewater or other sources of non-potable water may be used for irrigation of the Golf Course. Each Owner expressly assumes such detriments and risks and agrees that neither the owner or manager of the Golf Course nor any of their successors or assigns shall be liable to the Owner or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Residence to the Golf Course, including, without limitation, any claim arising in whole or in part from the negligence of the manager or owner of the Golf Course, or their successors or assigns. Each Owner hereby agrees to indemnify and hold harmless the owner and manager of the Golf Course and their successors and assigns against any and all such claims by Owner's invitees.

### **3.28 Reclaimed Water**

The irrigation lines installed to irrigate the Golf Course and any City-maintained landscaping may use reclaimed water which may produce an

offensive odor. The Association may also be permitted to use reclaimed water to irrigate landscaping on Common Area.

## **ARTICLE 4 HOMEOWNERS' ASSOCIATION**

### **4.1 Organization**

The Association is a nonprofit mutual benefit corporation organized under the laws of the State of California and shall have the powers and purposes specified in this Declaration and its Articles. Its affairs shall be governed by and consistent with the Governing Documents.

### **4.2 Membership and Voting**

(a) Every person or entity who is a Record Owner of a fee or undivided fee interest in any Lot which is subject to Assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to such Lot, and each Owner shall remain a Member until his or her ownership in all Lots in the Development ceases, at which time his or her membership in the Association shall automatically cease. The foregoing is not intended to include persons or entities such as lenders that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment by the Association.

(b) The Association shall have one class of voting membership consisting of all Owners. When more than one person holds an interest in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised as set forth in the Bylaws. The Owners or co-owners of any Lot shall be entitled to only one (1) vote per issue or vacancy on the Board. Voting is covered in more detail in the Bylaws.

### **4.3 Transfer of Membership**

Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner. Tenants do not become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer of membership rights is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other

membership outstanding in the name of the seller pertaining to the Lot that was sold shall be null and void.

#### **4.4 General Powers, Duties and Authority of the Association**

The Association shall have all the powers set forth in the Articles, together with the general power to do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to do any and all lawful things which may be required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for and/or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort and/or general welfare of the Owners and guests of the Owners. Without limiting the generality of the foregoing paragraph, the Association, for the benefit of all Lots and all Owners, shall have the power, obligation, and duty to enforce the provisions of this Declaration.

#### **4.5 Association Rules**

Procedures for enacting and modifying the Association Rules are set forth in Article 8 of the Association Bylaws.

#### **4.6 Breach of Rules or Restrictions**

Any breach of the Association Rules or any other Governing Document provision shall give rise to the rights and remedies set forth in Article 6 hereof.

#### **4.7 Limitation of Liability of Directors and Officers**

4.7.1 Claims Regarding Breach of Duty. No Director or officer of the Association shall be personally liable to any of the Members or to any other person for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such person has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believed to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Area and enforcement of the Governing Documents.

4.7.2 Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress, or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer in excess of the Association's insurance coverage if all of the following conditions are satisfied:

- (1) the act or omission was performed within the scope of the volunteer Board member or officer's Association duties;
- (2) the act or omission was performed in good faith;
- (3) the act or omission was not willful, wanton, or grossly negligent;
- (4) the Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least Three Million Dollars (\$3,000,000) and Directors' and officers' liability insurance with coverage of at least One Million Dollars (\$1,000,000).

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this Section. The provisions of this subsection (b) are intended to reflect the protections accorded to volunteer Directors and officers of common interest development associations pursuant to Civil Code §5800 and to Association Members under Civil Code §5805, or any comparable superseding statute.

#### **4.8 Expenditure of Association Funds**

The Assessments levied by the Association shall be used for the payments described below and to promote the recreation, health, safety, and welfare of the residents in the Development and for the improvement and maintenance of the Common Area and the Lots including, but not limited to, payment for the following:

- (a) Maintenance, repair, and replacement of Common Area;
- (b) The services of a person or firm to manage the Development (herein called the "Manager"), to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Development, whether such personnel are employed directly by the Board or are furnished by the Manager;
- (c) Legal and accounting services necessary or proper in the operation of the Association or the enforcement of the Governing Documents;

(d) Any other materials, supplies, equipment, labor, services, maintenance, repairs, insurance, licenses, taxes, assessments or other expenses which the Board is required or permitted to secure or pay for pursuant to the terms of the Governing Documents or which, in the exercise of sound business judgment, it deems to be necessary or proper for the operation of the Development or in order to carry out or enforce the terms of the Governing Documents; provided that if any of the foregoing are provided for a single Lot, the cost thereof shall be specially assessed to the Owner of such Lot in accordance with Article 5 below;

(e) Any amount necessary to discharge any lien or encumbrance levied against the Development or any part thereof which may, in the opinion of the Board, constitute a lien against the Development or against the Common Area, rather than merely against the interest therein of particular Owners; provided that if one or more Owners are responsible for the existence of such lien, such Owner or Owners shall be jointly and severally liable for the cost of discharging such lien and the cost thereof shall be specially assessed to the Owner or Owners in accordance with Article 5 below; and

(f) Policies of insurance described in Article 9(i) below.

#### **4.9 Manager of Development**

The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association only to the extent that such contract of employment would not constitute an illegal delegation of such duties and responsibilities, provided that any contract with the firm or person appointed as manager or managing agent shall provide for the right of the Association to terminate the same with or without cause, upon no more than thirty days written notice by the Board.

#### **4.10 Property Taxes and Assessments**

To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

#### **4.11 Mergers and Consolidations**

The Association shall have the power to participate in mergers and consolidations, to the extent permitted by law, with other nonprofit corporations having the same type of primary purposes as the Association, provided that any such merger or consolidation shall have the prior written approval of two-thirds (2/3) of the Members, which approval shall be

obtained in a meeting of the Association called for that purpose, written notice of which shall be given to all Members of the Association not less than ten (10) days nor more than ninety (90) days in advance and which notice shall specify the purpose of such meeting.

#### **4.12 Dissolution**

Upon dissolution of the Association, the assets of the Association shall be distributed to the Members in the same proportions as contributions to the Association's account have been made, and to the Mortgagees as their interests appear.

#### **4.13 Assessments**

The Association shall have the power to fix and levy Assessments and enforce payment of such Assessments in accordance with Article 5 of this Declaration. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

#### **4.14 Additional Board Powers**

(a) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber property and/or member assessments of the Association as security for the repayment of such debt.

(b) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a Planned Development.

(c) Bring and defend actions on behalf of the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. Prior to filing litigation regarding any disciplinary action against a Member, the Board shall comply with the requirements set forth in Article 6. The Board shall have the discretion to determine whether any such action is in the best interests of the Association, taking into account the cost of any such action, the possibility of success and the benefits resulting from a successful action, and may decline to pursue any such action if it determines that it is not in the best interests of the Association to do so.

## **ARTICLE 5 ASSESSMENTS**

### **5.1 Covenants to Pay Assessments**

Each Owner of one or more Lots, by acceptance of a deed or other conveyance thereof (whether or not it shall be so expressed in such deed or conveyance) covenants and agrees to pay to the Association (1) Regular Assessments, (2) Special Assessments, and (3) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and charges and for the enforcement of the liens hereinafter described.

### **5.2 Extent of Owners' Personal Obligation for Assessments**

All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person or entity who was the Owner of the Lot at the time the Assessment is due and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Except as otherwise provided by law, each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale, or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner who was assessed. A contract seller of any Lot shall be liable for all such charges until a conveyance by him or her of the Lot subject to the Assessment is recorded in the Office of the County Recorder of Contra Costa County, California.

### **5.3 Creation of Lien**

All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be secured by a continuing lien upon the Lot against which such Assessment is levied. Any lien for unpaid Assessments created pursuant to the provisions of this Article 5 may be subject to foreclosure as provided in Article 5 below. 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, as long as prior to such transfer a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law. 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 the respective Assessments and charges on such Lot.

#### **5.4 No Avoidance of Assessment Obligations**

No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment or non-use of his, her, or its Lot or any other portion of the Development.

#### **5.5 Regular Assessments**

##### 5.5.1 Preparation of Annual Budget; Establishment of Regular Assessments.

Not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year including additions to the Reserve Account established to defray the costs of future repairs, replacements, betterments, or additions to the Common Area and for other Association responsibilities hereunder, by preparing and distributing to all Members a budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in said Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the vote of Members as provided in Section 5.10.

##### 5.5.2 Establishment of Regular Assessments by Board; Membership Approval Requirements.

The total annual expenses and contributions to reserve accounts estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Section 5.5(a) above and Section 5.5(c) below, the Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote of Members as required by Section 5.10.

5.5.3 Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to Assessment increases necessary to address Emergency Situations. For purposes of this Section 5.5(c) and Section 5.6(b), an Emergency Situation is any one of the following:

- (1) An extraordinary expense required by an order of court;

(2) An extraordinary expense necessary to repair or maintain the Common Area where a threat to personal safety is discovered; or

(3) An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 5.5(a) above, provided that, prior to the imposition or collection of an Assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budget process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

5.5.4 Allocation of Regular Assessment. The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the budget for that fiscal year shall be levied and allocated equally against each Lot.

5.5.5 Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll and shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as an Owner or as a Member of the Association. The Assessment roll (which may be maintained in the form of a computer printout) shall show for each Lot the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. In order to inspect the Assessment roll, an Owner must inform the Board, in writing, of a purpose for the inspection that is reasonably related to a valid Association purpose. If the Board determines there is no valid Association purpose, the request for inspection shall be deemed denied.

5.5.6 Statement of Assessment. The Board shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of Regular Assessments for the next succeeding fiscal year not less than thirty (30) nor more than sixty (60) days before the beginning of the Association's fiscal year.

5.5.7 Failure to Make Estimate. If, for any reason, the Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment for the preceding fiscal year, together with any Special Assessment made pursuant to this Article for that year, shall be assessed

against each Owner and his or her Lot on account of the then current fiscal year.

**5.5.8 Payment of Regular Assessment.** The Regular Assessment shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessments in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly Assessment. If an Owner fails to pay any monthly installment by the thirtieth (30th) day after the date the installment was due, the Board may terminate that Owner's right to pay the Regular Assessment in monthly installments and declare the then unpaid balance of the Regular Assessments for that year immediately due and payable.

## **5.6 Special Assessments**

**5.6.1 Purposes for Which Special Assessments May Be Levied.** Subject to the membership's approval requirements set forth in Section 5.6(b) below, the Board shall have the authority to levy Special Assessments ("Special Assessments") on Owners and their respective Lots for the following purposes:

- (1) Regular Assessments Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, the Board shall levy and collect a Special Assessment, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations under the Governing Documents
- (2) Capital Improvements. The Board may also levy Special Assessments for additional Capital Improvements to the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Area). The Special Assessment power conferred herein is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Areas through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with this Declaration.
- (3) Restoration of Reserve Funds. A Special Assessment may be levied to restore reserve account expenditures borrowed from it in order to meet current operating expenses or to deal with emergencies.

5.6.2 Special Assessments Requiring Membership Approval. No Special Assessment described in Section 5.6(a) above, which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote of membership as required under Section 5.10, provided that this membership approval requirement shall not apply to any Special Assessment levied to address Emergency Situations as defined in Section 5.5(c) above.

5.6.3 Allocation and Payment of Special Assessments. Except as provided herein, when levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against, and charged to each Owner and his or her Lot in equal amounts.

5.6.4 Payable. Special Assessments for purposes described in 5.6.1(1) above shall be due as a separate debt of each Owner and a lien against his or her Lot and shall be payable to the Association as determined by the Board. Special Assessments for purposes described in 5.6.1(2) and 5.6.1(3) above shall be due as a separate debt of each Owner and a lien against his or her Lot and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

## **5.7 Special Individual Assessments**

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with 5.6 above, the Board may impose Special Individual Assessments ("Special Individual Assessments") against an Owner and their Lot in any of the circumstances described hereafter, provided that no Special Individual Assessment may be imposed against an Owner pursuant to this Section until after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article 6 below. Subject to the foregoing, the facts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) Damage to Common Area. In the event that any damage to, or destruction of, any portion of the Common Area is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, agents, employees, licensees, co-residents, contract purchasers or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in

connection therewith shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(2) Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any cost or expenses to accomplish (1) the payment of delinquent Assessments, (2) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, (3) any repair, maintenance or replacement to any Lot or Common Area caused by the Owner's failure to maintain his or her own Lot or by any failure of any component on the Owner's Lot, or (4) compliance by any Owner or member of his or her family, or any of his or her tenants, guests, agents, employees, licensees, contract purchasers or invitees, and/or his or her Lot into compliance with any provision of the Governing Documents the amounts incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(3) Required Maintenance on Lots. As more particularly provided herein, if any Lot is maintained so as to become a nuisance, health hazard, fire, or safety hazard for any reason, including, without limitation, the accumulation of trash or junk, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition, and recover the cost of such action through the imposition of a Special Individual Assessment against the offending Owner.

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

## **5.8 Purpose and Reasonableness of Assessments**

Each Assessment made in accordance with the provisions of this Declaration, and in particular, 4.8 above, is hereby declared and agreed to be for use exclusively (1) to promote the recreation, health, safety and welfare of the

individuals residing within the Development; (2) to promote the enjoyment and use of the Development by the Owners and their families, tenants, invitees, licensees, guests and employees; (3) to provide for the repair, maintenance, replacement and protection of the Common Area as provided herein; and (4) for payment of insurance as may be carried by the Association. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

### **5.9 Notices for Member Approval**

In the event that Member approval is required in connection with any increase or imposition of Assessments as required in this Article 5, approval of the requisite percentage of the Members shall be solicited by written ballot in accordance with the terms of the Bylaws.

### **5.10 Quorum Requirement for Member Approval**

In the event that any Member approval is required in connection with any increase or imposition of Assessments pursuant to this Article 5, the Quorum required for such action shall be a majority of the Voting Power of the Association. Such increase or imposition of Assessments shall be approved if a Majority of a Quorum votes to enact the increase or imposition of Assessment.

### **5.11 Collection of Assessments; Enforcement of Liens**

(a) Delinquent Assessments. The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed from and after the time the Association causes to be recorded with the Contra Costa County Recorder a Notice of Delinquent Assessment in conformance with Civil Code §5675 or comparable superseding statute. Each default shall constitute a separate basis for a lien. Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded in the Office of the County Recorder of the County of Contra Costa, State of California, a Notice of Satisfaction and Release of Lien. If any lump sum or installment payment of a Regular Assessment, Special Assessment, or Special Individual Assessment assessed to any Owner(s) is not paid in full

within thirty (30) days after the same becomes due, late charges shall accrue. The late charges shall be ten percent (10%) of the amount of the delinquent Assessment, or Ten Dollars (\$10), whichever is greater. The late charge shall constitute full compensation to the Association for additional bookkeeping, billing and administrative costs incurred as a result of the late payment of an Assessment, but shall not represent compensation for lost interest, attorneys' fees, or other costs of collection, which are provided for below.

(b) The Association may, in addition to said late charges, recover all reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees. If an Assessment is not paid within thirty (30) days after the due date, the Association may, in addition to said late charges, assess interest on the unpaid delinquent Assessments, commencing thirty (30) days after the Assessment becomes due and continuing until paid, at a rate of twelve percent (12%) per annum, or the highest rate permitted by law, whichever is less. No Owner may exempt himself or herself from liability for his or her share of Assessments, late charges, interest, and costs by waiving the use or enjoyment of the Common Area or by abandoning his or her Lot.

(c) Partial Payments of Assessments. Subject to the limitations imposed by Civil Code §5655 or comparable superseding statutes, if any, any partial payments the Association receives will be applied as specified in the Association's Delinquent Assessment Collection Policy and/or Association Rules.

(d) Effect of Nonpayment of Assessments. In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Except where otherwise prohibited by law or this Declaration, foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure.

However, so long as the provisions of Civil Code §5720(b) or a comparable superseding statute limiting the Association's foreclosure rights are in effect, judicial or non-judicial foreclosure shall only be available to collect delinquent assessments in excess of \$1,800 exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees or interest (or such other minimum

amount as may be specified by statute) or if the assessments are more than 12 months delinquent. The Association shall, in collecting any delinquent assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents or California law. If the statutes imposing these restrictions on the foreclosure rights of the Association are amended or repealed, these restrictions shall be deemed to be amended or repealed in the same manner, without a vote of the Members

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

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

(g) Judicial Foreclosure. In the event foreclosure is by an action in Superior Court to obtain a court order authorizing foreclosure, reasonable costs, including attorneys' fees, shall be allowed.

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

### **5.12 Transfer of Lot by Sale or Foreclosure**

Except as otherwise provided by law, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to such Lot prior to the sale or transfer. However, the sale or transfer of any Lot pursuant to the foreclosure of any First Mortgage shall extinguish the lien and such Assessments as to payments which became due prior to such sale or transfer, unless provided otherwise by law. No sale or transfer of a Lot as a result of foreclosure, exercise of a power of sale or otherwise, shall relieve the new Owner of such Lot, whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party, from liability for any Assessments thereafter becoming due or from the lien thereof. Unless otherwise provided by law, when the First Mortgagee or other purchaser of a Lot obtains title to the same as a result of foreclosure of any such First Mortgage or other prior encumbrances or exercise of a power of sale contained therein, the person acquiring title, his or her successors and assigns, shall not be solely liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title. Instead, such unpaid Assessments shall be deemed to be Common Expenses collectible from the Owners of all the Lots, including such acquirer, his or her successors and assigns. Furthermore, foreclosure shall not affect the Association's right to maintain an action for the collection of delinquent Assessments against the foreclosed party personally.

### **5.13 Priorities**

Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article shall have priority over all other liens and encumbrances applicable to the Lots, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of Record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of the power of sale or a judicial foreclosure involving a default under such First Mortgage or deed of trust, or other prior encumbrance, unless otherwise provided by law.

#### **5.14 Unallocated Taxes**

In the event that any taxes or other charges imposed by a governmental entity are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lot, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.5 above, and if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

#### **5.15 Waiver of Exemptions**

Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article 5, the benefits of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

#### **5.16 Notice of Default**

The beneficiaries of any deed of trust or Mortgage and/or their successors and assigns, upon written request for such notification, shall be entitled to written notification from the Association of default by the trustor or mortgagor of any Lot in the performance of such trustor's or mortgagor's obligations under this Declaration, the Articles, or the Bylaws which is not cured within sixty (60) days.

#### **5.17 Estoppel Certificate**

A certificate executed and delivered by a majority of the Board of Directors of the Association, stating an amount for all past due Regular Assessments, Special Assessments, and Special Individual Assessments, and all interest and late charges thereon, as of a specified date, which are the basis for a lien or liens hereunder, or a certificate stating that no Regular Assessment, Special Assessment, or Special Individual Assessment is unpaid as of a specified date, or a certificate stating that a paid as of a specified date, shall be conclusive upon the Association and all Owners as to any fact stated therein and in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request and at a reasonable fee not to exceed Ten Dollars (\$10.00).

#### **5.18 Exemption of Certain Areas of the Development from Assessments**

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

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

(b) Any Lot owned by the Association.

### **5.19 Maintenance of Assessment Funds**

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds, treasury bills, or similar investments consistent with the investment standards normally observed by trustees, and which investments do not create a risk of loss of principal. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by Civil Code §5510(a) or any comparable superseding statutes and Section 13.5 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subsection (b) below.

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

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

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 5.6 above shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital Improvement for which reserve funds for replacement are allocated.

(d) Reserve Funds. The Board shall not expend funds designated as Reserve Funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of Common Area which the Association is obligated to repair, restore, replace, or maintain and for which the Reserve Fund was established. However, the Board may authorize the temporary transfer of money from a Reserve Fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has complied with the requirements set forth in Civil Code §5515 or any comparable superseding statutes.

(e) When the decision is made to use Reserve Funds or to temporarily transfer money from the Reserve Fund to pay for litigation pursuant to Civil Code §5520, or any comparable superseding statute, the Association shall notify the Members of its decision by general notice, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis which such accounting is available for inspection by the Members at the Association's office or other designated location.

## **5.20 Assignment of Rents**

Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents, and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing, or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration that are in default. The Association hereby confers on each Owner the authority to collect and retain

the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the right to collect and retain rents shall be deemed revoked, and the Association, after providing written notice to the defaulting Owner may, in its discretion, pursue one or more of the remedies provided in Civil Code 2938(c) or comparable superseding statute for enforcement of an assignment of rents provision.

## **ARTICLE 6 ENFORCEMENT OF GOVERNING DOCUMENTS**

### **6.1 Right of Action**

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges, or equitable servitudes contained in the Governing Documents is inadequate so that the failure of any Owner, tenant, occupant or user of any Lot to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers, or Board of Directors, or by the respective successors in interest, unless the Board shall determine to waive this right and seek money damages in an appropriate case.

### **6.2 Costs and Attorneys' Fees**

Subject to Section 6.6 below, in any action brought because of any alleged breach or default of any Owner or other party hereto under the Governing Documents, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

### **6.3 Cumulative Remedies**

The respective rights and remedies provided by the Governing Documents or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at a different time, of any other rights or remedies for the same or any different breach or for the same or any different failure of any Owner or others to perform or observe any provision of the Governing Documents.

### **6.4 Failure Not a Waiver**

The failure of any Owner, the Board, the Association, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights of way, liens, charges, or equitable servitudes contained in the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter.

## 6.5 Rights and Remedies of the Association

(a) Generally, In the event of a breach or violation of any of the Rules or any of the provisions contained in the other Governing Documents by an Owner, his or her family, or guests, agents, employees, invitees, licensees, co-residents, contract purchasers, lessees or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Governing Documents through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including, but not limited to, the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or suspension of the Owner's voting rights as a Member of the Association for a period not to exceed thirty (30) days; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section.

(b) The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be at the sole discretion of the Board.

(c) If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of Civil Code §5975 or comparable superseding statute or otherwise by law.

(d) Schedule of Fines. The Board shall implement and distribute annually a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for Rules violations).

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

(f) Limitation of Disciplinary Rights. The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the

full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, lessees, co-residents, tenants, guests or invitees) to comply with any provision of the Governing Documents including any duly enacted Rules except where the loss or forfeiture is the result of a judgment of a court of competent jurisdiction, a decision arising out of arbitration, foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of this Section. Nothing in this provision shall limit the Association's ability to impose a temporary suspension of an Owner's (including their tenants, family members, guests, and invitees) ability to use the Common Facilities.

(g) Hearings. No penalty or temporary suspension of voting rights shall be imposed pursuant to this Article unless the Owner receives notice at least ten (10) days before a hearing or meeting, either by personal delivery or first-class or registered mail, of the Board's decision to consider discipline at a meeting or hearing. The Owner has the right to attend the meeting. The Owner shall have the right to present evidence and testimony on his or her own behalf and the right to examine all evidence and testimony presented at the hearing. The Board is required to provide notification of the Board's decision and of any discipline imposed either by personal delivery or first-class or registered mail to the Owner within 15 days following the decision. Disciplinary action will not be effective unless the Board fulfills these requirements.

(1) Notwithstanding the foregoing, under circumstances involving conduct that constitutes

(1) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of any Owners,

(2) a traffic or fire hazard,

(3) a threat of material damage to, or destruction of, another Lot, or

(4) a Violation that is of such a nature that there is no material question regarding identity of the violator or whether a Violation has occurred (such as late payment of Assessments or parking violations), the Board or its duly authorized agents may undertake immediate corrective or disciplinary action, and, upon request of the offending

party (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

(2) If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following receipt of notice of the disciplinary action or, in the case of disciplinary action pursuant to Section 6.5(e) above, within five (5) days following the date when the disciplinary action is taken, whichever is earlier. The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later, unless the parties mutually agree on a later date. Except as to action taken under Section 6.5(e) above, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(h) Notices. Any notice required by this Article 6 shall, at a minimum, set forth the date and time of hearing if one is scheduled, a brief description of the action or inaction constituting the alleged Violation, a reference to the specific Governing Document provision alleged to have been violated, a statement of the Association's intended action and the effective date of the proposed action. The notice shall be delivered in accordance with the provisions of Section 16.6 below.

## **6.6 Informal Dispute Resolution**

In the event of a dispute between the Association and an Owner involving their rights, duties, or liabilities, either party may request in writing the other party to meet and confer in an effort to resolve the dispute informally. An Owner may refuse such request from the Association, but the Association may not refuse such a request from an Owner. The Association shall appoint one Director, or more than one Director, its Manager, its legal counsel, or other approved representative as it may choose, to meet and confer in good faith in an effort to resolve the dispute with the Owner. The Owner shall be entitled to bring one additional representative including his or her legal counsel, however, the Owner must provide the Association with at least five (5) days prior written notice of same to provide the Association with time to arrange for its own legal counsel to attend, if desired. The Association shall state whether the appointed Director or Directors have the authority to enter into a binding agreement with the Owner, or whether the Board of Directors

would need to ratify any agreement arising out of this process. The Owner and appointed Director or Directors shall meet within thirty days of delivery of the written request to the other party and there shall be no charge to the Owner. An agreement reached through this informal resolution process binds the parties and is judicially enforceable if the agreement is not in conflict with law and not in conflict with the Governing Documents of the Association and if either the agreement is consistent with the authority granted to Association's representative or if the agreement is subsequently ratified by the Board of Directors. If no agreement arises out of this process, the Owner may bring the dispute to the Association's Board of Directors, for its determination, under its Governing Documents.

## **6.7 Formal Alternative Dispute Resolution**

Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. As long as Civil Code §§5925 - 5965 (or comparable superseding statutes requiring alternative dispute resolution) are in force, prior to litigation the Board shall attempt in good faith to resolve any dispute with a Member concerning an alleged violation of the Governing Documents through mediation or arbitration as provided in those statutes. The Board shall have discretion to determine the form of ADR (mediation or arbitration) which will be pursued. This Section 6.7 shall automatically be repealed from this Declaration should the above Civil Code Sections (or comparable superseding statutes) be repealed by the California Legislature. The parties shall comply with the statutory requirements set forth in Civil Code §5925, et seq. in connection with any alternative dispute resolution proceeding.

# **ARTICLE 7 MAINTENANCE AND REPAIR OBLIGATIONS**

## **7.1 Common Area**

The Association shall maintain or provide for the maintenance, repair, and replacement of all Common Areas, including all Improvements of whatever kind and for whatever purpose located thereon. The Association's obligation to provide for the maintenance, repair and replacement of Common Area shall include, but is not limited to, the requirement to beautify and maintain rights of way and other open areas upon said tract as shall be maintained for public use, or for the general use of the Owners. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter, or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. The Association shall provide gardening services for all the landscaping within the Common Area. The irrigation systems installed on the Common Area in connection with the landscaping shall also be operated and maintained by the Association. It is the intent of the Association to

ensure that all landscaping visible from the Common Area streets and the Common Area walkways be professionally maintained. Therefore, the Association may, at its discretion, maintain the lawns, flower beds, shrubs, and trees, up to a house, fence, mow strip, or other border and/or barrier predetermined by the Association on any Lot that borders a Common Area street or Common Area walkway. Whenever a dispute arises as to the Association's maintenance borders and barriers, the decision of the Association shall prevail.

## **7.2 Gated Entrance**

In order to manage the cost and the level of service at the Gatehouse, the Board shall determine the staffing and hours of the Gate Attendants on behalf of the Association. The Owners acknowledge that neither the gate nor the gate attendants are intended for safety or security purposes.

## **7.3 Lots and Residences**

Except as otherwise specifically provided in this Declaration, each Owner shall maintain, repair, and replace the Owner's Lot, including the Residence, and any other Improvements located thereon, in a manner consistent with the standards established by the Governing Documents and other well maintained residential areas in the vicinity of the Development and in compliance with the Architectural Standards. Each Owner, at that Owner's sole cost and expense, shall regularly clear all storm drainage inlets and maintain the capacity and flow of all storm drainage Improvements situated on the Owner's Lot. Each Owner of a Residence within a Duet Building shall caulk and paint all portions of the Duet Building situated on that Owner's Lot or the boundary of that Owner's Lot.

## **7.4 Fences Separating Common Area and Lots**

Each fence which separates a Lot from Common Area shall be maintained, repaired, and replaced by the Owner of the Lot except for the surface facing the Common Area which shall be maintained by the Association. Maintenance shall include refinishing the exterior surface of the fence if that surface was previously finished with paint or stain.

## **7.5 Fences Adjacent to Golf Course**

The surface of any fence which faces a Lot and is situated on the common boundary of a Lot and the Golf Course shall be maintained by the Owner of the Lot at the sole cost and expense of the Owner. All fences situated on the common boundary of Common Area and the Golf Course shall be maintained by the Association at the sole cost and expense of the Association. The owner of the Golf Course shall have the right but not the duty to maintain any fencing installed along the boundary of the Golf Course.

## **7.6 Party Roof Ridges**

The Owners of a Party Roof Ridge shall each be responsible for maintaining, repairing, and replacing it. The costs of such maintenance, repair and or replacement shall be borne by any Owner who performs such work. In the event that an Owner of a Residence in a Duet Building replaces the roofing on any roof elevation which contains a Party Roof Ridge, that Owner shall be responsible for replacing that Party Roof Ridge in a good and workmanlike manner. Except as provided in the preceding sentence or the Rules, no Owner shall have any obligation to repair or replace any Party Roof Ridge. In the absence of negligent or willful conduct, any work performed by one Owner on the Party Roof Ridge shall entitle that Owner to a right of contribution from the other Owner of the Duet Building that was re-roofed. In the event that adjacent Duet Building Owners cannot agree on the cost, manner or need for roof replacement, the dispute shall be heard by a local low-cost mediation service.

## **7.7 Party Fences or Party Walls**

The Owners of a Party Fence or Party Wall shall be responsible for painting, 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 work necessitated by the negligent or willful action of an Owner shall be borne by that Owner. In the absence of negligent or willful conduct, any work performed by an Owner shall entitle that Owner to a right of contribution from the other Owner of the Party Fence or Party Wall.

## **7.8 Recovery of Costs of Certain Repairs and Maintenance**

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the costs of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.7 above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 2.3 above to enter the Owner's Lot

and perform the repairs or maintenance as long as the Owner has been given notice and the opportunity for a hearing in accordance with Article 6 hereof. The Association may then impose a Special Individual Assessment on the defaulting Owner, as provided in Section 5.7 above. The fifteen -(15) day notice shall not be required in the case of an emergency threatening any Lot, Common Area or Common Facility.

### **7.9 Cooperative Maintenance Obligations**

To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

### **7.10 Eradication and Treatment of Wood Destroying Pests**

Each Lot Owner shall be responsible for maintenance, repair, eradication, treatment, and/or temporary relocation necessitated by the presence of wood destroying pests or organisms on his or her Lot. Each Lot Owner shall be responsible for maintaining his or her Lot in a condition to avoid and deter the presence of wood destroying pests or organisms, including but not limited to, maintaining proper separation between earth and wood members. In the event of infestation, each Lot Owner shall be responsible for repairing, eradicating and/or treating the infestation occurring on his or her Lot and any Improvements thereon and for any costs or expenses of temporary relocation necessitated by such repair, eradication, or treatment.

### **7.11 Owner of Golf Course**

If the Association or an Owner ("defaulting party") fails to maintain any landscaping or fencing situated adjacent to the Golf Course, the owner of the Golf Course shall have the right, but not the duty to maintain the landscaping or fencing at the sole cost and expense of the defaulting party. If the owner of the Golf Course desires to perform any such maintenance authorized by the preceding sentence, the owner of the Golf Course shall first notify the defaulting party in writing and provide the defaulting party with at least thirty (30) days from the date of the notice to perform such maintenance. If the defaulting party fails to commence and complete such maintenance within said thirty (30) day period, the owner of the Golf Course shall have the right to enter the Common Area or Lot on which the maintenance is required during reasonable business hours and perform such maintenance.

## **ARTICLE 8 DAMAGE OR DESTRUCTION**

### **8.1 Minor Destruction Affecting Common Area**

Notwithstanding Section 8.6, the Board shall have the duty to repair and reconstruct the Common Area without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed 5% of the budgeted gross expenses of the Association for that fiscal year. The Board may levy a Special Assessment for the cost of such repair and reconstruction to the extent insurance proceeds or other funds are unavailable.

### **8.2 Major Destruction Affecting Common Area**

(a) Destruction: Proceeds Equal or Exceed 85 Percent of the Reconstruction Costs If there is a total or partial destruction of any Common Area or Common Facility Improvements within the Development, and if the available proceeds of the insurance maintained pursuant to Article 9(i) are sufficient to cover at least 85% percent of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within 90 days from the date of destruction, 75% of the Members determine that such repair and reconstruction shall not take place. If repair and reconstruction are to take place, the Board shall be required to record, not later than 120 days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

(b) Destruction: Proceeds Less Than 85 Percent of Reconstruction Costs If the proceeds of insurance are less than 85% of the cost of repair and reconstruction, repair and reconstruction may nevertheless take place if, within 90 days from the date of destruction, Members then holding at least 51% of the total Voting Power determine that such repair and reconstruction shall take place. In that event, the Board shall be required to record, not later than 120 days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

### **8.3 Rebuilding Procedures**

If the Members determine to rebuild, pursuant to Section 8.2, the Board shall levy a Special Assessment or shall increase Regular Assessments, subject to the requirements of Article 5 hereof, in an amount necessary to pay for any repairs that are not covered by insurance proceeds.

#### **8.4 Rebuilding Contract**

If the Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Common Area or Common Facilities substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least two reputable contractors and may award the repair and reconstruction work to any qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

#### **8.5 Rebuilding Not Authorized**

If the Members determine not to rebuild, any insurance proceeds then available for rebuilding shall be used to rebuild as much of the Common Area or Common Facilities as possible, in a manner to be determined by the Board of Directors.

#### **8.6 Minor Repair and Reconstruction**

In any case, the Board shall have the duty to repair and reconstruct Improvements, without the consent of the Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Five Thousand Dollars (\$5,000). In the case of damage to Common Facilities which does not exceed Five Thousand Dollars (\$5,000), all Lots shall be assessed for an equal portion of any uninsured expense.

#### **8.7 Emergency Repairs**

In the event of a casualty, there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with insurance claims requirements prior to procuring bids for performance of restoration work. In that event, and without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as may be deemed necessary or desirable and the Board may charge the operating accounts for the cost thereof.

## **ARTICLE 9 INSURANCE**

### **9.1 Association's Insurance Obligations and Rights**

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 and the cost of the coverage is commercially reasonable, or, if not available, the best rating possible or its equivalent.

(a) Named Insured: Unless otherwise provided in this Article, 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.

(b) Certificate of Insurance: The Board shall give notice of the Association's insurance coverage in accordance with Civil Code §5300, or any comparable superseding statute

(c) 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.

(d) 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.

(e) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

- (1) 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;
- (2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- (3) That no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;
- (4) That no policy may be canceled, 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 Mortgagees;

(5) That any "other insurance" clause in any policy excludes individual Owners' policies from consideration;

(6) That no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(7) An agreed amount endorsement; and

(8) An inflation guard endorsement.

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

(g) Annual Review: The Board shall review the adequacy of all insurance at least once every year. 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 Development is situated.

(h) Deductible: 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.

(i) The Association shall obtain and maintain the following insurance policies:

(1) Property Insurance. 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 at least ninety percent (90%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(2) 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.

(3) Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.

(4) Fidelity Bond. The Board shall also purchase and maintain fidelity bonds or insurance in an amount that is equal to or more than the combined amount of the reserves of the association and total assessments for three months and which shall contain an endorsement for officers, directors, trustees and employees of the Association, the Association manager, and for all other persons handling or responsible for funds of or administered by the Association. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. If the association uses a managing agent or management company, the association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees. The association's fidelity bond shall also include computer fraud and funds transfer fraud.

(5) Directors' and Officers' Liability Insurance. The Association shall maintain a policy of insurance in the minimum amount of One Million Dollars (\$1,000,000) (or such greater amount as may be desired or required by law) on any Director, officer or member of a committee of the Association (collectively the "Agents") against any liability asserted or incurred against the Agent in such capacity or arising out of the Agent's status as such regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law; said insurance shall contain prior acts coverage.

(6) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with common funds such additional insurance and bonds as it may, from time to time, determine to be necessary

or desirable, including, without limiting the generality of this Section, demolition insurance and flood insurance. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

(j) Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by this Article 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.

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

(l) Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

(m) Waiver of Subrogation. All casualty and liability insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, officers, Owners, occupants of Lots, tenants, their family, guests, agents, and employees.

## **9.2 Owner's Insurance Obligations and Rights**

Insurance on Lots. An Owner may carry whatever personal liability, property damage liability, fire, and casualty insurance with respect to his or her Lot, and personal property as the Owner desires. The Association shall have no responsibility for the adequacy or extent of such insurance coverage. Each Owner of a Residence in a Duet Building shall cooperate with the adjoining Owner in the purchase of property insurance as specified in the Rules.

## **9.3 Insurance Claims**

In order to keep the Association's insurance premiums (and claim history) as low as possible and, thereby maximize the Association's ability to obtain reasonably priced insurance, the following provisions shall apply to property damage claims:

(a) Damage Due to Owner's Acts or Conduct. If the damage or loss is caused by an Owner's acts or omissions (or the acts or omissions of Owner's Family members, contract purchasers, tenants, guests, or invitees) or to a condition originating within the Owner's Lot and that Owner (or tenant) has one (1) or more insurance policies, the Owner's (and/or tenant's) insurance policy (or policies) shall be primary. The Association's insurance shall be excess insurance, not contributory, to that Owner's (and/or tenant's) insurance policy or policies. The damage or loss claim must be tendered to that Owner's (and/or tenant's) insurance policy or policies and that Owner's (and/or tenant's) insurer(s) must provide a written denial of coverage before the damage or loss claim can be tendered to the Association's insurance.

(b) Damage Due to Association's Intentional Acts or Negligence. If the damage or loss is caused by the Association's intentional acts and/or active negligence, the damage or loss claim can be tendered to the Association's insurance policy without any pre-requisite of tendering to the Owner's (or tenant's) insurance first.

(c) Damage to a Lot/Residence or Its Contents. If: (1) the damage or loss does not fall within either Subsection (a) or Subsection (b) above; (2) the damage or loss is to an Owner's Residence (and/or the contents/personal property within said Residence); and (3) the Owner (and/or tenant) with the damage or loss has insurance, the Owner's (or tenant's) insurance shall be primary. The Association's insurance shall be excess insurance, not contributory, to that Owner's (or tenant's) policy. The damage or loss claim must be tendered to that Owner's (and/or tenant's) insurance and that Owner's (and/or tenant's) insurer(s) must provide a written denial of coverage before the damage or loss claim can be tendered to the Association's insurance.

(d) Increase in Insurance Premium Due to Claim. If a claim is made to the Association's insurer for damage caused by the act or omission of an Owner or such Owner's Family members, contract purchasers, tenants, guests, or invitees or by a condition originating within the Owner's Lot for which the Owner is responsible, and such claim results in an increased insurance premium for the Association, the Owner shall be responsible for payment of the amount of such increase for a period of no more than three (3) years. A Special Individual Assessment shall be levied against the Owner for such liability, after the notice and hearing required in Article XII of this Declaration. The Board may waive the liability imposed by this Subsection only for good cause shown by the Owner.

## **ARTICLE 10 OBLIGATIONS OF OWNERS**

### **10.1 Notification of Contract Purchasers**

Each Owner shall notify the Secretary of the Association or the Association's Manager, if any, of the names of any contract purchasers and shall also notify the Secretary of the Association of the names of all persons to whom such Owner or contract purchaser has delegated all rights to use and enjoy the Development and the relationship that each such person bears to the Owner or contract purchaser.

### **10.2 Contract Vendee**

A contract vendor of a Lot must delegate his or her voting rights as a Member and his or her right to use and enjoy the Common Area to any contract vendee in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract vendor shall remain liable for any default in the payment of Assessments by the contract vendee until title to the property sold has been transferred to the vendee.

### **10.3 Payment of Assessments and Compliance with Rules**

Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with, and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to any Governing Documents for the purpose of protecting the interests of all Owners.

### **10.4 Discharge of Assessment Liens**

Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

### **10.5 Joint Ownership of Lots**

In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Section 10.5 shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

### **10.6 Prohibition on Avoidance of Obligations**

No Owner, by non-use of the Common Area, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to Article 5 of this Declaration.

**10.7 Termination of Obligations**

Upon the conveyance, sale, assignment, or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing the transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of his or her ownership of the Lot shall automatically cease.

**10.8 Documents to be Provided to Prospective Purchaser**

As more particularly provided in Civil Code §4525, or any comparable superseding statute, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof shall provide the prospective purchaser with all documents listed therein. :

**10.9 Requirements to Convey**

No Owner shall convey his or her interest in any Lot without simultaneously conveying his or her membership and other interests in the Association, and no Member of the Association shall sell, assign, convey, transfer or otherwise dispose of his or her membership rights in the Association (except by delegation pursuant to Section 10.2) without at the same time conveying his or her interest in the Lot, ownership of which gives rise to his or her said rights, to the same person or persons to whom said membership rights are so sold, assigned, conveyed, transferred or disposed. Tenants shall not be Members of the Association.

**ARTICLE 11 ARCHITECTURAL CONTROL**

**11.1 Approval of Proposed Exterior Improvements and of Proposed Landscaping Changes.**

Before commencing construction or installation of any exterior Improvement or changes to grading and drainage within the Development, including backyard and side yard landscaping, the Owner planning such Improvement or landscaping must submit a written request for approval to the Board of Directors or its duly appointed Architectural Committee established pursuant to Section 11.3 below. The Owner's request shall include structural plans and specifications satisfying the minimum requirements specified in the Architectural Rules (as provided in Section 11.6). The Board of Directors shall base its decision to approve, disapprove or conditionally approve the proposed Improvement on the criteria described in Section 11.6 below. In the event that any Improvement currently existing on any Lot violates architectural and landscaping rules enacted after the Improvement was installed, the Improvement will be deemed approved; however, at the time it

is replaced, it must be brought into compliance with all architectural and landscaping rules in effect at the time it is proposed to be replaced.

### **11.2 Modifications to Approved Plans**

Once a proposed work of Improvement has been duly approved by the Board of Directors, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement as approved, without a separate submittal to, and review and approval by, the Board of Directors. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Board of Directors, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement but also on any other affected component. The restrictions of this subparagraph shall also apply to any proposed exterior modification of any Lot, fence or other structure from its appearance or location as originally constructed. If it comes to the knowledge and attention of the Association, the Architectural Committee, or the agents or employees of either, that a work of Improvement or a landscaping change, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Section 11.10 below, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper architectural review and approval are obtained.

### **11.3 Composition of Architectural Committee**

The Architectural Committee shall be composed of the number of Association members authorized and appointed by the Board of Directors. In selecting Members for the Architectural Committee, the Board of Directors shall endeavor, when reasonably possible, to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Architectural Committee's jurisdiction. Architectural Committee members shall serve two (2) year terms subject to the Board of Directors' power to remove any Architectural Committee member and to appoint his or her successor. Neither the members of the Architectural Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If the Board of Directors establishes an Architectural Committee, it shall be empowered to hold meetings, make recommendations, and provide advice to the Board. The Board may, through resolution, prepare a list of home improvements for the committee that requires no additional approval by the Board.

## **11.4 Duties**

The Architectural Committee shall have the duty to consider and advise upon the proposals and plans for Improvements, including grading and drainage plans, submitted to it pursuant to this Declaration, to propose Architectural Rules pursuant to Section 11.6, and to carry out all other architectural review duties imposed upon it by this Declaration.

## **11.5 Meetings**

The Architectural Committee shall meet from time to time as necessary to properly perform the architectural review functions described herein. The Architectural Committee shall keep and maintain a written record of all actions taken. The Applicant shall be entitled to appear at any meeting of the Architectural Committee at which his or her proposal has been scheduled for review and consideration. The Applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, landscape architect, engineer and/or contractor, if any. Other Owners whose Lots may be affected by the proposed Improvement (in terms of the view or solar access of their Lots, noise, or other considerations) shall also be entitled to attend the meeting. Reasonable notice of the time, place, and proposed agenda for the review of architectural and/or landscaping matters shall be communicated before the date of the meeting to any Applicant whose application is scheduled to be heard, and to other Owners whose Lots may be affected by the proposed Improvement.

## **11.6 Basis for Approval of Improvements**

When a proposed Improvement is submitted to the Architectural Committee for review, the Architectural Committee shall recommend the requested approval to the Board of Directors only if the Architectural Committee makes the following findings regarding the proposal:

- (1) the character, scale, quality, architectural relationship with the site and other buildings, building materials, colors, screening, lighting, and similar elements are compatible with adjacent buildings;
- (2) the Owner's plans and specifications conform to this Declaration and to the Architectural and Landscaping Rules in effect at the time such plans are submitted to the Architectural Committee;
- (3) the Improvement will be in harmony with the external design of other structures and/or landscaping within the Development;
- (4) the Improvement, as a result of its appearance, location or anticipated use will not interfere with the reasonable enjoyment of any other Owner of his or her property;

(5) the proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of the Development;

(6) the proposed Improvement will not unduly block views of the other Owners; and

(7) the proposed Improvement will not generate unreasonable traffic or parking problems or fire hazard.

The Board of Directors shall be entitled to determine that a proposed Improvement or component thereof or proposed landscaping is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement or component or landscaping has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Area or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development or creation of unacceptable fire hazard militate against erection of the Improvement or use of a particular component thereof or installation of particular landscaping on the Lot involved in the Owner's submittal. In approving a request for construction of an Improvement, or for installation of landscaping, the Board of Directors may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, avoidance of fire hazards, or similar mitigating conditions. Approval or denial of an application shall be provided in writing and the Applicant may seek reconsideration of the decision by reconsideration before the full Board of Directors. Such reconsideration, if any, shall be heard by the Board within 15 days of an application for re-consideration.

### **11.7 Time Limits for Approval or Rejection**

Within sixty (60) days after submission of plans and specifications satisfying the requirements of the Architectural and Landscaping Rules, the Board of Directors shall return one set of such plans or list of plant species to the Applicant, with either written notice of approval or disapproval or with written suggestions for changes required for approval accompanying the returned set of plans. If the Board of Directors recommends that the plans and specifications or list of plant species be modified, the Applicant may submit such changes for approval to the Board of Directors, which shall not unreasonably withhold its approval so long as the Applicant has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Applicant within sixty (60) days after the Owner's plans and specifications (or revisions thereto) are

submitted to the Board of Directors, the plans or list of plant species shall be deemed to have been approved as submitted.

### **11.8 Failure to Complete Work**

Unless the Board of Directors grants the Owner an extension of time to complete the exterior construction of the Lot or Improvement, the construction, reconstruction, refinishing or alteration of any such Improvement must be completed within six (6) months after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, weather, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. If the Owner fails to comply with this Section, the Board of Directors shall proceed in accordance with the provisions of Section 11.10 below as though the failure to complete the Improvement was a noncompliance with approved plans.

### **11.9 Inspection of Work by Board of Directors**

Inspection of the work relating to any approved Improvement or installation of landscaping and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Board of Directors and Architectural Committee shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications or approved plant list. The Board and Architectural Committee must give the Owner of the Lot reasonable notice of such inspections.

(b) Upon the completion of any work of Improvement for which architectural approval is required under this Article, the Owner shall give the Board a written notice of completion.

(c) Within thirty (30) days after the Owner has given the Board a written notice of completion, the Board shall inspect the Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans or approved plant list. If the Board finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, or that the landscaping contains plant species that were not approved or that plants were installed closer to a structure than the approved plan allowed, then within the thirty (30) day inspection period, the Board shall give the Owner a written notice of noncompliance detailing those aspects of the Improvement that must be modified, completed or corrected. If the violation or nonconforming work is not corrected, the Board shall have the enforcement rights and remedies set forth in Section 11.10 below.

(d) If for any reason the Board of Directors fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the Owner's notice of completion, the Improvement or landscape installation shall be deemed to have been constructed in accordance with the approved plans for the Improvement unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Board of Directors with respect thereto.

### **11.10 Enforcement of Architectural and Landscaping Compliance Matters**

In addition to other enforcement remedies set forth in this Declaration, the Board of Directors shall have the authority to order an abatement ("red tag") of any construction, alteration, landscape installation or other matter for which approval is required, to the extent that it has not been approved or if it does not conform to the plans and specifications submitted to and approved by the Board of Directors. If an Improvement is red tagged, the Owner and his or her contractor shall promptly cease all construction activity until such time as the issues giving rise to the red tag are resolved. The red tag notice shall clearly state the reasons why the abatement has been ordered. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, or if the Owner feels that the Improvement has been red tagged without justification, the Architectural Committee or Owner shall notify the Board of Directors in writing of such failure or alleged lack of justification. The Board of Directors shall then set a date on which a hearing shall be held before the Board of Directors regarding the alleged noncompliance.

The approval by the Board of Directors of any plans, drawings, or specifications for any work of Improvement done or proposed, or for any other matter requiring the Board of Directors' approval under this Article, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Lots and other factors may be taken into consideration by the Board of Directors in reviewing a particular submittal.

### **11.11 Variances**

The Board of Directors, in its sole discretion, shall be entitled to allow reasonable variances in any procedures or minimum construction standards in this Article 11, to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship to any Owner-Applicant, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Board of Directors shall conduct a hearing on the proposed variance after giving prior written notice to all Owners of all abutting Lots and to all Owners whose Lots are within the lesser of fifty (50) feet or two (2) Lots away from the Lot where the Improvement is proposed to be erected. The notice shall be mailed to the interested Owners at least fifteen (15) days prior to the date when the Board of Directors is scheduled to act on the requested variance. No decision shall be made with respect to the proposed variance until the fifteen (15) day comment period has elapsed.

(b) If the requested variance pertains to any material Improvement, the Board of Directors must make a good faith written determination about whether the variance is consistent with one or more of the following criteria:

(1) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or

(2) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Lot or Common Area within the Development.

### **11.12 Estoppel Certificate**

Within thirty (30) days after written demand is delivered to the Board of Directors by any Owner, and upon payment to the Association of a reasonable fee (as established from time to time by the Board of Directors), the Board of Directors shall record an estoppel certificate, executed by two of its members, certifying (with respect to any Lot owned by the Owner Applicant) that as of the date thereof, either: (1) all Improvements made and other work completed by the Owner comply with this Declaration; or (2) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the

Owner, or from anyone deriving any interest in the Lot through the Owner, shall be entitled to rely on the Association's estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

### **11.13 Limitation on Liability**

Neither the Association, the Board of Directors, nor the Architectural Committee or any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of:

- (1) the approval or disapproval of any plans, drawings and specifications, or plant list, whether or not defective;
- (2) the construction or performance of any Improvement, whether or not pursuant to approved plans, drawings, or specifications; or
- (3) the execution and filing of an estoppel certificate pursuant to Section 11.12 above, whether or not the facts stated therein are correct; provided, however, that such Member acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

### **11.14 Compliance with Governmental Regulations**

Review and approval by the Board of Directors of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements of any governing agency, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

## **ARTICLE 12 CONDEMNATION**

### **12.1 Sale by Unanimous Consent or Taking**

If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, or if any action or omission by a governmental agency threatens inverse condemnation, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Development, or a portion thereof, may be sold and conveyed to the condemning authority by the Board of Directors or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and

equitable by the Board. If the requisite number of Owners or institutional Mortgagees does not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

For purposes of this Article 12, the "condemnation award" includes the compensation recovered by judgment or settlement for the taking or damaging of property, the interest thereon, court awarded attorneys' fees and other court-awarded litigation expenses.

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

(a) Total Sale or Taking. A total sale or taking of the Development shall mean a sale or taking that

(1) renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or

(2) renders the Development as a whole uneconomical as determined by the vote or written consent of two-thirds (2/3) of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking.

However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each such Lot bears to the fair market value of all Lots in the Development. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

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

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

(2) to Owners and to their respective Mortgagees, as their interests may appear, of Lots in the Development whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owner's share of expenses paid pursuant to this Section 12.2(b) (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Map and this Declaration to eliminate from the Development the Lots so sold or taken; then

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

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

### **12.3 Appraiser**

Wherever in this Article 12 reference is made to a determination of the value or fair market value of one or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply the SREA or other national organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the condemnation proceeds as an expense of the Association.

## **ARTICLE 13 SENIOR HOUSING DEVELOPMENT**

This Development is a "senior citizen housing development" as defined in Civil Code on §51.3 and shall be operated as "Housing for Older Persons" as defined in United States Fair Housing Act, 42 USC §3607(b)(2).

### **13.1 Residency Requirements**

No person may reside in the Development, temporarily or permanently, except as expressly authorized by this Section 13.1. This residency requirement is not an ownership requirement.

(a) Senior Residence Requirement. At least one (1) person residing in each Residence shall be a Senior. However, upon the death or dissolution of a marriage, or upon the hospitalization, or other prolonged absence of a Senior, any person who resided in a Residence with the Senior at the time of such event can continue to reside in that Residence so long as immediately after such event

(1) such person is a Qualified Permanent Resident and

(2) at least eighty percent (80%) of the Residences in the Development are occupied by at least one (1) Senior.

(b) Qualified Permanent Residents May Reside with Senior. Provided that at least one (1) person authorized by Section 13.1 resides in a Residence, the following persons may also reside in that Residence:

(1) Qualified Permanent Residents;

(2) Health Care Assistants who are actually providing live-in, long-term or hospice health care to a Senior residing in that Residence; and

(3) Temporary Guests are permitted to temporarily reside in a Residence provided that no guest may reside within the Development for more than sixty (60) days in any calendar year.

For purposes of the preceding sentence and the first sentence of this Section 13.1, a person shall be deemed to reside in a Residence on any day that the person remains overnight or sleeps at the Residence.

### **13.2 Resident Advisory Committee**

The Board shall establish a Resident Advisory Committee. The Resident Advisory Committee shall consist of the number of Association members authorized and appointed by the Board. All persons appointed to the Resident Advisory Committee shall be Members of the Association, shall reside in the Development and shall be Seniors. All Resident Advisory Committee members shall serve until the expiration of the term for which they were appointed unless they resign or are replaced. The Resident Advisory Committee shall monitor the services described in Section 13.1 above. In addition, the Resident Advisory Committee shall make

recommendations to the Board concerning other services intended for the benefit of Seniors which the Resident Advisory Committee would like to establish and operate in the Development. The Resident Advisory Committee shall develop proposed rules or methods, as requested by the Board of Directors, which such Rules must be adopted by the Board in accordance with the requirements of this Declaration and applicable law.

### **13.3 State and Federal Law Limitations**

Both state and federal laws regulate senior citizen housing developments. Under current laws, minimum age restrictions are not enforceable unless several requirements are satisfied. Those requirements, as applied to the Development, provide that the residency requirements set forth in 13.1 above are not enforceable unless (a) at least eighty percent (80%) of the Residences are occupied by at least one Senior and (b) the Association publishes and adheres to policies and procedures that demonstrate the intent to provide housing for Seniors. The Association has the responsibility to maintain the Development in compliance with these requirements. If the Development ever fails to satisfy applicable state or federal requirements, it is possible that the residency requirements will not be enforceable. In addition, new laws may be enacted, or judicial decisions published which will impede or prevent enforcement of the residency requirements. By acceptance of a deed to a Lot, each Owner acknowledges the possibility that the residency requirements set forth in Section 13.1 may not be enforceable, either currently or in the future.

### **13.4 Liberal Interpretation and Rules**

This Declaration shall at all times be liberally interpreted to satisfy the requirements imposed by applicable state and federal laws for the enforcement of the residency requirements imposed by Section 13.1. If any judicial decision or federal or state law or regulation is published or adopted after the date of recordation of this Declaration which impedes or prevents the enforcement of the residency requirements set forth in Section 13.1, the Board shall take all actions necessary to continue enforcing the residency requirements imposed by Section 13.1 including, if necessary, the adoption of Rules which further clarify or, if necessary, amend the provisions of this Article 13. Notwithstanding any provisions in this Declaration to the contrary, upon the recordation in the Official Records of the County Recorder of any Rules adopted pursuant to the preceding sentence, such Rules shall supersede this Declaration.

## **ARTICLE 14 AMENDMENT**

**14.1 Amendment in General**

(a) Amendment by Board of Directors. The Board of Directors may, by a vote of a two-thirds (2/3) majority of all Directors, adopt amendments to this Declaration when an amendment is needed to conform a particular provision or provisions of this Declaration to changes in applicable California State law when said changes in applicable California State law are mandatory and nondiscretionary in nature. Before entertaining a motion to approve any such amendment(s), the Board shall receive a written opinion from the Association’s legal counsel confirming that (1) a change or changes in California law necessitates a corresponding amendment to the Association’s Declaration to make the affected Declaration provision(s) an accurate statement of current underlying California law and (2) the Association is bound by law to observe said change or changes in California law.

(b) Amendment by the Owners. This Declaration may be amended in any respect by the vote by secret written ballot of the holders of a majority (51% or more) of the Voting Power of the Association. Notwithstanding the foregoing, the percentage of the Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

**14.2 Effective Date of Amendment**

The amendment will be effective upon Recordation of a Certificate of Amendment, duly executed and certified by the President and Secretary of the Association, setting forth in full the amendment so approved and that the approval requirements of Section 14.1 have been duly met.

**14.3 Reliance on Amendments**

Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE 15 MORTGAGEE PROTECTION**

**15.1 Conflict**

Notwithstanding any contrary provision in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

**15.2 Inspection of Books and Records**

Upon request, any Owner or First Mortgagee shall be entitled, at the Owner or First Mortgagee’s sole cost and expense, to inspect and copy the books, records and financial statements of the Association, the Governing Documents, and any amendments thereto during normal business hours.

### **15.3 Financial Statements for Mortgagees**

In accord with Civil Code §5305, or any comparable superseding statute, the Association, at its expense, shall prepare a review of the Association's financial statement in accordance with generally accepted accounting principles by a licensed CPA. A copy of the review shall be distributed to the Members within one hundred twenty (120) days of the end of the Association's fiscal year. The Association shall provide a copy of the audited financial statement to any Mortgagee who makes a written request for it.

### **15.4 Mortgage Protection**

A breach of any of the conditions or the enforcement of any lien provisions 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 in the Development; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

## **ARTICLE 16 MISCELLANEOUS PROVISIONS**

### **16.1 Severability**

Invalidation of any one of these Covenants, Conditions or Restrictions by judgment or court order shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and all of the terms hereof are hereby declared severable.

### **16.2 Term of Declaration**

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

### **16.3 Indemnification**

The Association shall and does hereby indemnify the Board (and each member thereof) and the officers of the Association and any committee members (and each of them) against all expenses and liabilities, including attorneys' fees reasonably incurred by such person or persons in connection with any proceeding to which he or she may be a party by reason of being or having been a Board member or officer of the Association, or duly appointed committee member, except in such cases where said person has committed a willful malfeasance in the performance of his or her duties.

## **16.4 Interpretation**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance and operation of a common interest development.

## **16.5 No Public Rights in the Development**

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

## **16.6 Notices**

Except as may be specifically provided otherwise herein, all notices, requests, demands, statements, advice, Assessments, notifications and other communications contemplated hereunder or given pursuant hereto shall be in writing and shall be deemed given and effective when delivered personally, or when deposited in the mails, postage prepaid, or given to an overnight delivery service for transmittal, cost of sending prepaid, first-class mail, addressed as follows: If to the Association or the Board of Directors, at the principal office of the Association as designated from time to time by written notice to the Members; if to a Director, at the address from time to time given by such Director to the Secretary for the purpose of service of such notice; if to a Member, at the address from time to time given by such Member to the Secretary for the purpose of service of such notice, or, if no such address has been so given, to the address of any Lot within the Development owned by such Member.

## **16.7 Singular Includes Plural**

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

## **16.8 Captions**

All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

## **16.9 Exhibits**

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

## **16.10 Conflict**

To the extent there are conflicts or inconsistencies between this Declaration and the Bylaws or the Association Rules, this Declaration shall prevail.

### **16.11 Successor Statutes**

Any reference in any one of the Governing Documents to a statute will be deemed a reference to any amended or successor statute.

### **16.12 Effective Date**

This Declaration shall become effective upon its Recordation in the Official Records of the County.

### **16.13 Power of Attorney**

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

**Certification**

We, the undersigned hereby certify, under penalty of perjury, that this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Summerset at Brentwood III Association set for herein was duly adopted by at least a fifty-one percent (51%) approval of the total voting power of the Association.

**SUMMERSET AT BRENTWOOD III ASSOCIATION**

By: \_\_\_\_\_ (*President*)

By: \_\_\_\_\_ (*Secretary*)

**Notary Attestations to Follow**

## **EXHIBIT "A"**

Legal Description of Development

### **Phase 1:**

Lots 1 through 21, inclusive, 63 through 103, inclusive, and Parcels A and B, as shown

on the subdivision map of Brentwood Country Club, Subdivision 7940, filed for record on

June 1, 1999, in Book 410 of Maps at Pages 35 through 69, inclusive, in the Official

Records of the County of Contra Costa, State of California ("7940 Map").

### **Phase 2:**

Lots 22 through 62, inclusive, and Parcel C, as shown on the 7940 Map.

### **Phase 3:**

Lots 104 through 135, inclusive, and Parcels D, E and F, as shown on the 7940 Map.

### **Phase 4:**

Lots 136 through 180, inclusive, and Parcel G, as shown on the 7940 Map.

### **Phase 5:**

Lots 117 through 166, inclusive, and Parcels C, D, E, F and G, as shown on the

subdivision map of Brentwood Country Club, Subdivision 8083, filed for record on

November 18, 1999, in Book 417 of Maps at Page 14 et. seq., in the Official Records of

the County of Contra Costa, State of California ("8083 Map").

### **Phase 6:**

Lots 29 through 37, inclusive, 69 through 106, inclusive, and 167 through 173, inclusive,

and Parcels A and B, as shown on the 8083 Map.

Parcels I, L, N, R and PP, as shown on the 7940 Map.

**Phase 7:**

Lots 1 through 28, inclusive, 38 through 68, inclusive, as shown on the 8083 Map.

**Phase 8:**

Lots 107 through 116, inclusive, as shown on the 8083 Map.

Lots 1 through 23, inclusive, and Parcels A, M and Q, as shown on the subdivision map

of Brentwood Country Club, Subdivision 8084, filed for record on September 15, 2000, in

Book 424 of Maps at Page 1 et. seq., in the Official Records of the County of Contra

Costa, State of California ("8084 Map").

Parcels P and S, as shown on the 7940 Map.

**Phase 9:**

Lots 24 through 34, inclusive, 52 through 70, inclusive, and 92 through 111, inclusive,

and Parcel B, as shown on the 8084 Map.

**Phase 10:**

Lots 35 through 51, inclusive, and 71 through 91, inclusive, and Parcel C, as shown on

the 8084 Map.