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**FIRST RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
WOODGATE GLEN, A PLANNED UNIT DEVELOPMENT**

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**FIRST RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF WOODGATE GLEN, A PLANNED UNIT DEVELOPMENT**

The Declaration of Restrictions executed by Debra Investments, Inc., a California corporation ("Declarant") on March 30, 1984, and recorded on April 5, 1984, as Document No. 84021959 of the Official Records of Sonoma County, California (the "Original Declaration"), as amended, which affects that certain real property and improvements thereon described and commonly known as Woodgate Glen, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

1. Declarant was the original owner of that certain real property and improvements thereon located in the City of Santa Rosa, County of Sonoma, State of California (the "Properties"), and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

2. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

3. It was the further intention of the Declarant to sell and convey residential lots improved with residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in section 1351(k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Area" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

4. A majority of the Owners voted by written assent to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of said Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by California Civil Code section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Unless the context indicates a contrary intention, the terms used in the Governing Documents shall have the meanings specified in this article I. All article and section numbers referenced in this Declaration shall refer to articles and sections within this Declaration unless otherwise specified.

Section 1. "Architectural Committee" means the committee created pursuant to article V.

Section 2. "Articles" means the Articles of Incorporation of Woodgate Glen Owners Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 3. "Assessment" means any Regular, Special 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 IV.

Section 4. "Association" means Woodgate Glen Owners Association, a California nonprofit corporation, its successors and assigns. The Association is an "association" as defined in California Civil Code section 1351(a).

Section 5. "Association Rules" means the rules, regulations, and policies adopted by the Board of Directors of the Association, pursuant to article III, section 7, as the same may be in effect from time to time.

Section 6. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 7. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 8. "City" means the City of Santa Rosa and its various departments, divisions, employees and representatives.

Section 9. "Common Area" means all real property within the Project together with all improvements thereon and all easements incident thereto owned by the Association for the common use and enjoyment of the Owners. Unless the context clearly indicates a contrary intent, any reference herein to the Common Area shall include any Common Facilities located thereon.

Section 10. "Common Expense" means any use of common funds authorized by article IV or the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repair, addition, alteration or reconstruction of the Common Area, Common Facilities, or any portion of any Residence that the Association is obligated to maintain or repair; (b) all expenses or charges incurred to procure insurance for the protection of the Association and its Board of Directors; (c) all amounts necessary for reserves for maintenance, repair and replacement of the Common Areas, Common Facilities, or any portion of any Residence that the Association is obligated to maintain or replace, and for any nonpayment of Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 11. "Common Facilities" means all improvements now existing or hereafter constructed or installed within the Common Area including, without limitation, the swimming pool and apron area, pool storage and pump house, pool furniture, parking areas, storage areas, service areas, driveways, walkways, trees, hedges, plantings, lawns, shrubs, fences, utilities, lighting fixtures, lines, and the clubhouse and other facilities and structures.

Section 12. "County" means the County of Sonoma, State of California, and its various departments, divisions, employees and representatives.

Section 13. "Declaration" means this instrument, as it may be amended from time to time.

Section 14. "Exclusive Use Common Area" means those portions of Common Area consisting of the interior of garages set aside for the exclusive use and enjoyment of the Owners as

depicted on the subdivision map which are located outside the boundaries of the Owners' Lots and which are appurtenant to those Owner's Lots.

Section 15. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, Bylaws, and the Association Rules.

Section 16. "Improvement" includes, without limitation, the construction, installation, alteration, demolition, remodeling or removal of any buildings, skylights, spas, antennas, utility lines, shutters, awnings, doorsteps, decks, landscaping and landscaping structures (fences, walls, nets, fountains, ponds, planter boxes), patios, or structures of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence and which do not involve the roof or any load bearing wall thereof.

Section 17. "Lot" means all legally described parcels on the Subdivision Map excluding the Common Area. When appropriate within the context of this Declaration and the Bylaws, the term "Lot" shall include the Residence and other improvements located on the Lot or to be constructed on the Lot.

Section 18. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended under this Declaration or the Bylaws.

Section 19. "Mortgage" means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. The terms "Mortgagee" and "Mortgage" as used in article XIV shall be limited to first mortgages and deeds of trust, and the beneficial owners of those security devices.

Section 20. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot.

Section 21. "Owner of Record" and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 22. "Party Wall" means any wall or fence of a Residence, including a patio wall or fence, located on a property line dividing any Lot which wall is commonly used by any such Lot and the adjoining Lot.

Section 23. "Properties", sometimes also referred to in this Declaration as the "Development", means all parcels of real property (Common Area and Lots) described in the Recitals to this Declaration, together with all Common Facilities and other improvements located thereon or to be constructed or installed thereon, and all appurtenances thereto.

Section 24. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot according to article IV, section 2.

Section 25. "Single Family Residential Use" means the occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration, the Association Rules, and the requirements imposed by applicable zoning and other applicable federal, state, and local laws and regulations limiting the number of persons who may occupy single family residential dwellings. The restrictions on multiple family occupancy imposed by this Declaration are intended to protect, enhance and maintain the single family residential atmosphere which exists within the Properties and to avoid an overburdening of the Common Area and Common Facilities.



Section 26. "Special Assessment" means an Assessment levied on an Owner and his or her Lot according to article IV, section 3.

Section 27. "Special Individual Assessment" means an Assessment levied on an Owner and his or her Lot according to article IV, section 4.

Section 28. "Subdivision Map" means that certain map filed for record on August 5, 1983, In Book 349 of Maps at Pages 11, 12, 13, 14, and 15, Sonoma County Records.

## **ARTICLE II RIGHTS AND OBLIGATIONS OF OWNERS**

Section 1. Nonexclusive Easements of Enjoyment. The Common Area shall be owned by the Association. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, 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 rights and restrictions:

(a) The right of the Association to assign and control the use of the parking areas within the Common Area and to limit the number of guests of Members who may use recreational Common Facilities.

(b) The right of the Association to adopt Association Rules as provided in article III, section 7, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to temporarily suspend the voting rights and right to use the Common Facilities, by any Owner and his or her tenants and guests, subject to compliance with the due process requirements of article XIII, section 6.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and in furtherance thereof to Mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of article IV, section 3.

(d) The rights of other Owners to exclusively use and enjoy the interior of the garage designated in this Declaration and the Subdivision Map as Exclusive Use Common Areas for the exclusive benefit of the other Owners which are appurtenant to the Lots, together with the other Owners' rights of ingress and egress in and upon same to the extent necessary. The non-exclusive easements granted in this Declaration shall be subordinate to and shall not interfere with these exclusive easements.

Section 2. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Lots shall be subject to, and shall comply with, each and every provision of the Governing Documents, and as each 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. The acceptance of a deed to any Lot, the entering into a lease or contract of sale with respect to any Lot, or the occupancy of any Residence 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 said person and that said person will observe and comply with the Governing Documents.

### Section 3. Delegation of Use.

(a) Delegation of Use and Leasing of Residence. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to members of his or her family or to his or her tenants, lessees or contract purchasers who reside in his or her Residence, provided that any rental or lease may only be to a single family for Single Family Residential Use and be for a term greater than one (1) month.

During any period when a Residence has been rented or leased, the Owner-lessor and his or her family, guests and invitees shall not be entitled to use and enjoy the Common Area or Common Facilities, except to the extent reasonably necessary to perform his or her lessor responsibilities, provided that this restriction shall not apply to an Owner-lessor who is residing in another Residence within the Properties.

Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Prior to the occupancy by the tenant or lessee, the Board shall have the right to require that the Owner-lessor provide the secretary of the Association or the Association's property manager with a completed rental information form in the form designated by the Board, from time to time, which shall include, among other things, an acknowledgment of the Owner-lessor's delivery, and his or her tenant's or lessee's receipt, of a complete and current copy of the Governing Documents and the agreement by the Owner-lessor and his or her tenant or lessee to each and every provision set forth in the governing documents, and which shall enable the Association to contact the tenant or lessee in the event of an emergency relating to the Residence or Project.

(b) Discipline of Lessees and Owners. Subject to subsection (c) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association may suspend the tenant's or lessee's privileges to use the Common Facilities, and/or impose fines and penalties against the Owner.

Any fine or penalty levied against the Owner pursuant to this section 4 shall be considered a Special Individual Assessment as defined in article IV, section 4. Any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in subsection (c) below. Any Owner who shall lease his or her Residence shall be responsible for assuring compliance by the tenant or lessee with the Governing Documents.

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or his or her lessee or tenant) on account of the misconduct of his or her lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board or the general manager of the Association detailing the nature of the lessee's or tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the objectionable actions or misconduct of the tenant. Any hearing requested under this subsection (c) shall be conducted in accordance with article XIII, section 6.

(d) Security Deposit. Through its rule-making power, exercised in accordance with article III, section 7 hereof, the Board is hereby authorized and empowered to establish and implement an Association security deposit procedure to protect the Association, the Common Area and Common Facilities from negligence, damage and destruction caused by the tenants, or lessees of

any Owner, their families and guests. Said security deposit, if required, shall be payable by the Owner and shall be fixed in an amount not to exceed three (3) month's Regular Assessment and shall be held by the Association in a separate security deposit fund in the name of the Association. Within two weeks following receipt of notice from the Owner-lessor that the Residence is no longer being leased, the Association shall furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return the remaining portion of the security to the Owner.

(e) Recoverable Costs and Expenses. In the event of damage to, or destruction of, Common Area or Common Facilities by a tenant or lessee or the Owner of a leased Residence or the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of his or her tenant or lessee, the Association shall be entitled to apply the security deposit to the costs and expenses arising therefrom. The Owner-lessor shall thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the lease and notification to the Association of such termination, the security deposit, or the balance thereof, shall be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided above, the Association must give the Owner-lessor the notice and hearing rights specified in subsection (c), above.

Section 4. Obligations of Owners. All Owners of Lots shall be subject to the following:

(a) Owner's Duty to Notify Association of Contract Purchasers. Each Owner shall notify the Secretary of the Association of the names of any contract purchaser of his or her Lot. Each Owner and contract purchaser shall also notify the Secretary of the Association, or the Association's property manager, of the names of all persons to whom such Owner or contract purchaser has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner or contract purchaser.

(b) Contract Purchasers. A contract seller of a Lot must delegate the contract seller's voting rights as a Member of the Association and the contract seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents. Each Owner shall deliver to any prospective purchaser as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Association documents required by California Civil Code section 1368 or any successor statute. In furtherance of assisting the Owner with the foregoing, the Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover costs incurred to change its records in connection with a change of ownership of a Lot.

(d) 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 Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership of Lot. 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 subsection (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of his or her 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 this Declaration.

(h) 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 said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

(i) Obligation To Permit Entry by Association Adjacent Owners. Each Owner shall be obligated to permit the Owners of adjacent Lot or the representatives of such adjacent Owners to enter upon his or her Lot for purposes of performing alterations, installations, or repairs to mechanical or electrical services, including installation of television antennas and related cables, which are reasonably necessary for the use and enjoyment of the Owner's Lot, provided that requests for entry are made at least 24 hours in advance and that entry is at a time convenient to the Owner whose Lot is being entered. Each Owner shall also honor the right of the Association and its agents to enter his or her Lot as provided in article III, section 6(b).

### ARTICLE III HOMEOWNERS ASSOCIATION

Section 1. Association Membership. Every Owner of a Lot whose rights as a Member are not suspended under this Declaration or the Bylaws shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned by the Owner and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Section 2. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3. Voting Rights of Members. Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in article XIII, section 6.

Section 4. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with article IV. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 5. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser or Mortgagee, as the case may be. In the case

of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance, a Mortgagee does not have membership rights until the Mortgagee becomes an Owner by foreclosure or by deed in lieu thereof. Tenants who are delegated rights of use pursuant to article II, section 3, do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse 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 shall be null and void.

#### Section 6. Powers and Authority of the Association.

(a) Powers Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Area (including Exclusive Use Common Area except to the extent that the Owners are required to maintain said areas in accordance with article VII, section 3) and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and the Board shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in the Bylaws.

(b) Association's Limited Right of Entry. The Association and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) its exterior maintenance and repair obligations on individual Lots; (ii) obligations to enforce the architectural restrictions of article V hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, may pose a threat to, or cause unreasonable interference with, Association property or the Owners in common. The Association's rights of entry under this subsection (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lot or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all nonemergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours' 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 within the Residence.

#### Section 7. Association Rules.

(a) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Lots. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area (including Exclusive Use Common Area) and Common Facilities by Owners, their tenants, guests and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under article V; (iii) the conduct of disciplinary proceedings in accordance with article XIII, section 6; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under article VI; (v) collection and

disposal of refuse; (vi) minimum standards for the maintenance of Exclusive Use Common Areas and Lots; and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents. Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available from the Secretary of the Association or open for inspection during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been published in the Association newsletter or otherwise communicated to the Owners in writing. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken. Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

Section 8. Breach of Rules or Restrictions. Any breach of the Association Rules or of other Governing Document provision shall give rise to the rights and remedies set forth in article XIII.

Section 9. Limitation on Liability of the Association's Directors and Officers. The liability of the Association's Directors and Officers arising from the performance of the duties of their respective offices for the Association, including, without limitation, breach of duty, breach of contract, tortious acts and property damage, shall be limited to the greatest extent allowed under California Civil Code section 1365.7 or any successor statute.

## ARTICLE IV ASSESSMENTS

### Section 1. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor, covenants and agrees to pay to the Association Regular Assessments, Special Assessments, and Special Individual Assessments. Each such Assessment shall be established and collected as herein provided.

(b) Owner's 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 was levied. 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 against whom assessed.

(c) Creation of Assessment 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 a continuing lien upon the Lot against which such Assessment is

made. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in article IV, section 9, below.

(d) 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 any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

## Section 2. Regular Assessments.

(a) Preparation of Annual Budget: Establishment of Regular Assessments. Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the Association's fiscal year, unless otherwise provided by law, 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 any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a budget satisfying the requirements set forth in the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the Bylaws.

(b) Establishment of Regular Assessment by Board or Membership Approval Requirements. The total annual expenses 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 subsection (a) above, and subsection (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 or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association provided that this membership approval requirement shall not apply to any Regular Assessment levied to address "emergency situations" as defined in this article IV, section 2(c).

(c) Assessments to Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subsection (c), an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities where a threat to personal safety is discovered.

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

(d) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subsection (a) of this section 2, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties

owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(e) 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 which 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 his or her interest as a property 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. The delinquency statement required by article II, section 4(c) hereof shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(f) Mailing Notice of Assessment. The Board shall mail to each Owner at the street address of his or her 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 the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

(g) 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 made for the preceding fiscal year, together with any Special Assessment made pursuant to article IV, section 3(a)(i) for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(h) Payment of Assessment. Regular Assessments shall be due and payable by Owners on the first day of each month.

### Section 3. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subsection (b) below, the Board shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment 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, except as prohibited by article IV, section 2(a), the Board shall levy and collect a Special Assessment, applicable to the remainder of such year only, 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 hereunder. The Board's assessment authority pursuant to this section 3 subsection (a)(i) shall be subject to membership approval requirements under the circumstances described in article IV, section 2(a).

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital improvements within 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 Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities 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 article X.



(b) Special Assessments Requiring Membership Approval. No Special Assessments described in (i) section 3(a) hereof, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of article IV, section 2(a), shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this article IV, section 2(c).

(c) Allocation and Payment of Special Assessments. 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 the same manner prescribed for the allocation of Regular Assessments pursuant to article IV, section 2(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subsection 3(a)(i) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subsection 3(a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within 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.

#### Section 4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with for in section 3, above, the Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subsections (i) through (iii) below, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this section 4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to article XIII, section 6 and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities including the portion of the Lot which the Association is obligated to repair and maintain 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, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, 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.

(iii) Required Maintenance on Lots. As more particularly provided in article III, section 6(b) (and without limiting the generality of that subsection), if any Lot, including any Residence or other Improvements thereon, is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through 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, and subject to the conditions imposed, in subsection 4(a), above, 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 30 days after the mailing of notice of the Assessment.

(c) Limitation on Right to Lien Lots for Special Individual Assessments. With the exception of Special Individual Assessments imposed by the Association's Board of Directors to recover reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for its reasonable costs (including attorneys' fees) of collecting delinquent Assessments, Special Individual Assessments shall not be recoverable through the imposition of a lien against the Owner's Lot enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Special Individual Assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in this article IV, section 9.

Section 5. Purpose and Reasonableness of Assessments. Each Assessment made under the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. 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 his or her heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to his or her successors in title unless expressly assumed by them.

Section 6. Exemption of Certain of the Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 7. Notice and Procedure for Member Approval. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 2 and 3 of this article IV, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Corporations Code section 7513 and the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with the Bylaws. The quorum required for such membership action shall be a majority of the Members.

## Section 8. 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 or similar investments consistent with the investment standards normally observed by trustees. 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 California Civil Code section 1365.5 and the Bylaws.

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. Any interest received on such deposits shall be credited proportionately to the various Assessment fund accounts maintained on the books of the Association and/or to the Association's operating account as determined by the Board.

(b) Separate Accounts: Commingling of 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 amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this article IV, section 3(a)(i) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

## Section 9. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid on or before the last day of any calendar month after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable superseding statutes.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in California Civil Code section 1367 or comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article IV and California Civil Code section 1366, (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

The Association's right to impose a lien for Special Individual Assessments shall be subject to the limitations imposed by this article IV, section 4(c).

(ii) Remedies Available to the Association to Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against his or her Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a Lot by a trustee acting pursuant to this section 9 shall be conducted in accordance with California Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in Mortgages or deeds of trust.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), penalties and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code section 2924c, or comparable superseding statute.

The Association shall have the rights conferred by California Civil Code section 2934a to assign its rights and obligations as trustee in any nonjudicial 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 nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(iv) Actions for Money Judgment. In the event of a default in payment of any Assessment, 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 same.

Section 10. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

(a) Except as provided in paragraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien recorded before the Association's assessment lien.

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) Any assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by paragraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and the Owner's successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

(f) This section 10 and section 11, below, are intended to reflect the California law concerning community association assessment lien priority in effect as of the effective date of this Declaration. In the event that the applicable California laws are revised and the statute(s) addressing assessment lien priority apply to the Association, this section and section 11, below, may be revised by action of the Board to conform to the new statutory provisions concerning this subject.

Section 11. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record 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 a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

Section 12. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to this article IV, section 2 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.

Section 13. 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 which 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, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this section 13 shall be subordinate to the rights of any first Mortgagee.

Section 14. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this article IV, the benefit 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 his or her Lot.

## ARTICLE V ARCHITECTURAL COMMITTEE

Section 1. Improvements in General; Establishment of Architectural Committee. No Improvement of any kind shall be commenced, erected or maintained within any Lot, nor shall any exterior addition to or change or alteration be made in or to any Residence or to any Exclusive Use Common Area until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing, first by the Association's Architectural Committee, and thereafter by the Board of Directors, as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

Section 2. Appointment of Architectural Committee. The Board of Directors may appoint an Architectural Committee composed of not less than three nor more than five members, or, in the alternative, may itself perform the functions of the Architectural Committee, in which case any reference made herein to the Architectural Committee shall refer to the Board. Committee members appointed shall be from the membership of the Association and shall serve at the pleasure of the Board. Members of the Committee shall serve for a term of one (1) year. In the event of the death, resignation, or removal of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to compensation for services performed pursuant hereto.

Section 3. Submission of Plans; Action by Committee. Plans and specifications for the proposed Improvement shall be submitted for review and approval to the Architectural Committee by personal delivery or certified mail to the secretary of the Association or the chairman of the Architectural Committee. If such plans and specifications are approved by the Architectural Committee, the Architectural Committee shall forward them to the Board for review and approval. In the event the Architectural Committee fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, the request shall be deemed to have been approved by the Architectural Committee and the applicant may submit said plans and specifications directly to the Board for review and approval. In the event the Board fails to approve or disapprove such plans and specifications within forty-five (45) days after they have been submitted to it, the request shall be deemed to have been approved by the Board. Approval of the Architectural Committee or Board can contain conditions or requests for modification of particular aspects of the Owner's plans and specifications. Nothing in this paragraph shall prevent the Board from approving plans and specifications that had been previously rejected by the Architectural Committee.

Section 4. Architectural Rules. The Architectural Committee may, subject to review by the Board, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements

and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Properties, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

Section 5. Variances. The Architectural Committee, subject to review by the Board, shall be entitled to allow reasonable variances with respect to this article or any restrictions specified in article VI in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners of Lots within 100 feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(b) The Committee must make a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner within the Properties.

Section 6. Estoppel Certificate. Within forty-five (45) days after written demand is delivered to the Architectural Committee by any Owner, upon approval of the Board and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Lot comply with this Declaration; or (ii) that 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 bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on said 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.

## ARTICLE VI USE OF PROPERTIES AND RESTRICTIONS

In addition to the restrictions established by law or Association Rules promulgated by the Board (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots and the Common Area.

Section 1. Single Family Residential Use. The use of the Lots is hereby restricted to Single Family Residential Use. An Owner is permitted to lease or rent his or her Lot, subject to the provisions of article II, section 3.

Section 2. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

Section 3. Improvements. No Owner shall at his or her expense or otherwise make any alterations or modifications to the exterior of the buildings, fences or railings containing his or her Lot without the prior written consent of the Association or the Architectural Committee, if any. No floodlights or colored lighting shall be allowed on the exterior of any Residence except as permitted by the Association Rules. Furthermore, no structural alterations to the interior of or Common Area surrounding any Lot shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Association or the Architectural Committee, if any. Under no circumstances shall any Owner undertake any activity or work with respect to his or her Lot that will impair the structural soundness or integrity of another Lot or impair any easement or hereditament, or do any act or allow any condition to exist in or around his or her Lot which will adversely affect any other Lots or their occupants.

Section 4. Common Area. The Common Area other than Exclusive Use Common Areas shall be limited to the private use for egress, ingress, aesthetic and recreational purposes by the Association's Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement or work which in any way alters any portion of the Common Area from its natural or existing state shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Lot of that particular Owner, including Exclusive Use Common Area, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting his or her Lot.

Section 5. 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 could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifiers, televisions, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

Section 6. Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and resident:

(a) A reasonable number of common household pets, but in no event greater than two (2) dogs or cats in aggregate, may be kept on each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall be allowed on the Common Area only when they are leashed and are otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Residence or in the Common Area. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets. Pets shall not be fed in the common area. Owners of cats allowed outside must provide a litter box in their patio area.



(d) Each person bringing or keeping a pet on the Development shall be solely responsible for the conduct of his or her pets. The Association, the 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 regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon 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.

Section 7. Signs. No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post immediately adjacent to the front of their Residence any signs required by legal proceedings and a single "For Rent," "For Lease" or "For Sale" sign of reasonable dimensions. Signs shall not be attached to building siding or fences, and shall not be placed in windows. Owners will be required to reimburse the Association for costs related to any damage, such as broken irrigation lines, to the Common Area caused by the placement of a sign post in the ground. The Architectural Committee, in its discretion, shall be entitled to regulate or prevent altogether the erection and maintenance of Owner's, agent's or broker's directional signs along roadways or on any Common Area within the Development.

Section 8. Business Activities. No business or commercial activities of a kind that would involve the use of non-Owner employees or customer or client traffic shall be conducted on any Lot or on any portion of any Lot without the prior written approval of the Board, provided that the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a manner so as to prohibit any Owner from (a) keeping his or her personal business records or accounts therein, (b) handling his or her personal or professional telephone calls or correspondence therefrom, (c) leasing or renting his or her Lot in accordance with article II, section 3, or (d) conducting any other activities on his or her Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization. The uses described in (a) through (d); above, are expressly declared to be customarily incidental to the principal residential use of the Lot and not in violation of this section 8.

Notwithstanding the foregoing, an Owner may operate a child daycare business provided that he or she (i) registers with and obtains all required licenses and permits from the appropriate government agencies, (ii) complies with all applicable laws and the Governing Documents, (iii) maintains insurance in the amounts required by law, and under which the Association and its Directors and officers are named as additional insureds, (iv) provides the secretary of the Association with a copy of all licenses, permits, and insurance policies, and (v) at all times restricts the children from the Common Area and Common Facilities, including, without limitation, the pool areas and play equipment.

Section 9. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate outside of any Residence. Any trash that is accumulated by an Owner outside of any Residence shall be stored entirely within his or her Lot and screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Development to a public dump or trash collection area by the Owner or tenant at his or her expense. 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 9.

Section 10. Storage. Storage of personal property on any Lot shall be entirely within enclosed storage areas. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area. The Association shall have the right to establish and maintain on the premises appropriate storage yards and storage buildings for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Area.

Section 11. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the exterior of any Residence in a manner which is visible from any neighboring Lot or the Common Area.

Section 12. Antennas and Similar Devices. In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of the Development, no Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes on or about the exterior of any building within the Development unless architectural approval is first obtained in accordance with article V, hereof. The Owner of any antenna, satellite dish, or similar device shall be responsible for its maintenance and repair and shall indemnify the Association for any loss or damage caused by the installation, maintenance, or use of such antenna, satellite dish, or similar device, including, without limitation, damage caused to the siding or roof of any building. In no event shall the Architectural Control Committee be required to approve the installation or use of any antenna, satellite dish, or similar device that has a diameter or diagonal measurement of greater than 36 inches. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lots.

Section 13. Burning. There shall be no exterior fires whatsoever except barbecue fires within the fenced area of a Lot and contained within receptacles designed for such purpose.

Section 14. Sports Apparatus. No fixed or movable sports apparatus, including, but not limited to, basketball standards, ramps, and rails, shall be permitted within the Common Area, including the common driveways.

Section 15. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon 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 Lot or appurtenant structures within the Development.

Section 16. Diseases and Pests. No Owner shall permit any condition to exist on his or her Lot, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 17. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Development:

(a) Unless otherwise permitted by the Association, no vehicle shall be parked or left within the Development other than within an assigned parking space or garage or within a designated visitor parking space.

(b) Outdoor parking spaces within the Development shall be used by Owners, residents, and visitors only for parking currently licensed standard passenger vehicles (including bronco or blazer type trucks), standard motorcycles, and trucks which do not exceed one-half ton in gross weight that may be legally operated on public roads. Recreational vehicles and boats shall not be parked in outdoor parking spaces within the Development under any circumstances. Campers, trailers, commercial vehicles, and trucks in excess of one-half ton in gross weight shall not be parked

in outdoor parking spaces within the Development except for the sole purpose of short-term loading and unloading.

(c) Designated visitor parking spaces within the Common Area are to be used by visitors only (as such term shall be more particularly defined in the Association Rules) for the parking of their vehicles and are not to be used by Owners or other residents, either permanently or temporarily.

(d) No motor vehicle shall be constructed or repaired within the Development and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored within the Development; provided, however that the provisions of this section shall not apply to emergency vehicle repairs.

(e) The Board shall have the authority to tow at the Owner's expense, any vehicle parked or stored in violation of this section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

(f) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the Development as may be deemed prudent and appropriate.

Section 18. Use of Common Area Driveways. Vehicles shall be permitted on the driveways within the Development only for ingress and egress. The Association shall have the right to adopt reasonable rules regarding the control and use of said driveways.

Section 19. Household Members and Guests. Each Owner and resident shall be accountable to the remaining Owners and residents, their household members, visitors, guests and invitees, for the conduct and behavior of their household members and guests temporarily residing in or visiting the Owner or resident and for any property damage caused by such household members or guests.

Section 20. Window Coverings and Door Screens. Interior window coverings or blinds on Residence windows that show on the outside shall be white, off-white, or light pastel in color and of standard design. No exterior window coverings, blinds, or sun-shades shall be permitted. All door screens shall conform to the Architectural Rules then in effect.

Section 21. Activities Affecting Insurance. Nothing shall be done or kept within any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association (see article X, below) without the prior written consent of the Association and no Owner shall permit anything to be done or kept on his or her Lot or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Lot or any part of the Common Area.

Section 22. Variances. Upon application by any Owner, the Architectural Committee shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this article VI, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan of development contemplated by this Declaration.

Section 23. Enforcement of Properties Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under article XIII, section 6, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). The notice shall describe the

noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

**Section 24. Garages.** The garages shall be used to park motor vehicles and to store personal household items only, and shall not be used for living, business, recreational, or any other purpose. No motor vehicle shall be constructed or repaired within any garage, or any other portion of the Development; provided, however that the forgoing shall not apply to emergency vehicle repairs. No flammable, combustible, or hazardous materials shall be stored within any garage, or any other portion of the Development. No Owner, resident, or guest shall use any electrical outlet within any garage other than for the purpose of operating the existing lighting and automatic garage door opener. The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the garages as may be deemed prudent and appropriate. The Board and its agents shall have the right at all times upon no less than 24 hours' notice to the affected Owner to access the garages and take all necessary action at the cost of that Owner to ensure compliance with the provisions of this Declaration and the rules and regulations of the Board promulgated hereunder; provided, however, that no notice shall be required in any case that the Board reasonably believes that immediate access is required to prevent the possibility of damage to property or injury to persons.

**Section 25. Patio Walls and Fences.** No attachments, such as wires, trellises or plantings, shall be made to the exterior or interior of the walls or fences enclosing any patio area, nor shall such walls or fences be used as a playing surface for any sport or any other activity which would be a nuisance or would result in damage or increased maintenance to such walls or fences. No structure or device shall extend above the patio wall or fence lines except as may be allowed by the rules and regulations of the Board.

## ARTICLE VII MAINTENANCE RESPONSIBILITIES

### Section 1. Association Maintenance Responsibilities.

(a) **Common Area.** The Association shall be responsible for all maintenance, repair, upkeep and replacement within the Common Area. The foregoing responsibilities shall apply to the garages, excluding garage doors (except for exterior paint) and garage door openers and hardware. 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. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

(b) **Residence and Lot Improvements.** The Association shall provide exterior maintenance, the standard of which shall be determined by the Board of Directors, upon each Lot and Residence which is subject to Assessment hereunder, as follows:

(i) Paint, repair, replace and maintain the exterior building surfaces of all Residences, including roofs, chimneys above the roof (excluding all internal structures, whether above or below the roof), siding, exterior door and window frames and trim, gutters, fences, downspouts, and exterior walls and fences which are not a Party Wall, provided that the Association shall not be responsible for painting, repairing, replacing, or maintaining Residence or garage doors, door screens, openers, or hardware; windows, window glass, screens, or hardware, patio gates or hardware; vents; chimneys; foundations; or lighting fixtures or bulbs; and

(ii) Replace and care for trees, shrubs, grass, walks, and other landscaping improvements up to the exterior walls of the Owner's Residence, except for plantings and improvements located within fenced or enclosed patio areas on Lots.

Notwithstanding the foregoing maintenance responsibilities, the Association shall not have any liability or responsibility for damages arising from the condition of Lot improvements, including damage caused to the interior of any Residence or to the personal property of any Owner or tenant, except to the extent that such damages were caused by the gross negligence of the Association carrying out its maintenance responsibilities under this section.

## Section 2. Owner Maintenance Responsibilities.

(a) Except as specifically provided in Section 1, above, each Owner shall be responsible for the maintenance of his or her Residence and Lot, including without limitation, the repair, replacement, and maintenance of all improvements within the interior of his or her Residence; the exterior sheathing and underlayment, framing, insulation, and interior walls; the plumbing, electrical, heating, air conditioning, and duct systems servicing his or her Residence; Residence and garage doors, door screens, openers, and hardware; windows; window glass, screens, frames, trim, and hardware; patio gates and hardware; vents; chimneys (excluding the exterior portion above the roof but including all internal structures, whether above or below the roof); foundations; lighting fixtures and bulbs, including glass lamp jars and exterior lights; Improvements within enclosed patio areas; concrete surfaces within the fenced or enclosed areas on the Lot; and all areas beneath the Residence and patio areas. Notwithstanding the exterior maintenance obligations of the Association, each Owner shall maintain his or her Residence and Lot in a neat, clean, attractive, and safe condition at all times, including the removal of any debris from the walkways leading to his or her Residence and garage and from the roof and doorstep of his or her Residence. Each Owner shall be responsible for the maintenance of all of the exterior landscaping located within perimeter fences or Patio Walls on his or her Lot.

Each Owner shall be responsible for any repair, maintenance, or replacement, and for the cost thereof, of any and all utility lines, pipes, and connections within his or her Lot that benefit his or her Lot, including, without limitation, sewer, water, gas, electrical, cable television, and telephone services. Additionally, in the event that the sewer main collector line connection, the water or gas gate "shut-off" valve, or the point at which the utility provider accepts responsibility for the repair, maintenance, or replacement of the electrical, television cable, or telephone line for a particular Lot is outside the boundaries of the affected Lot, the Owner of that Lot shall additionally be responsible for such utility lines and pipes from the previously described locations (including the connection) to the point of entry onto the Owner's Lot. In the event of mutual responsibility between Owners and/or the Association, each shall share the cost of the repair, maintenance, or replacement proportionately to the square footage of affected property each owns.

Any replacement of pipes or lines shall be made within the same easement in which the utility was originally located, if at all possible. No lines or pipes shall be replaced above the ground to replace lines or pipes which were formerly underground. All plans and specifications for repair, maintenance, or replacement of utilities as provided in this section which require any alternation of pipes, lines, or the surface of the ground shall be submitted to the Architectural Review Committee for review pursuant to Article V of this Declaration and shall be subject to the provisions of that Article.

(b) Except in the enclosed patio areas appurtenant to a Residence, no planting or gardening shall be done on any Lot, and there shall be no exterior painting of Residences by or on behalf of the Owners thereof, nor repair or replacing of original roofs or utility laterals by said persons, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with the latter's maintenance responsibilities in order to preserve the external harmony and uniformity of appearance of Residence structures within the Development.

(c) Each Owner shall maintain his or her garage in neat, clean, attractive, and safe condition at all times.

### Section 3. Recovery of Certain Repair and Maintenance Costs.

(a) In the event that 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 Association insurance policies or any liability insurance maintained by the responsible Owner, the cost 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 pursuant to article IV, section 4.

(b) In the event that an Owner fails to perform maintenance functions 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 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 article III, section 6(b) to enter his or her Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with article XIII, section 6.

Section 4. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in furtherance of its work.

## ARTICLE VIII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by Owners who make use of the wall in equal proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute between Owners concerning a Party Wall, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and resolution of the dispute shall be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of

the Association shall select an arbitrator for the refusing party. Said arbitrators shall render a decision within thirty (30) days after appointment.

**Section 7. Party Wall Easements.** In all cases where a structural wall constituting a portion of a single Residence, or a structural wall constituting a common wall for two Residences, is located upon the dividing line between adjacent Lots, the Owner of said adjoining Lots shall have reciprocal mutual nonexclusive easements for the maintenance of said wall, the reconstruction of said wall in the event of the partial or total destruction of the same, drainage associated with said wall or the Residence of which said wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Residence or Residences. The Owner of a Residence having a structural wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of said wall without the consent and permission of the Owner of the adjoining Lot.

## **ARTICLE IX EASEMENTS**

**Section 1. Encroachment Easements.** Each Lot and its Owner shall have and is granted an easement over all adjoining Lots and the Common Area 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. In the event a Residence is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Lot agrees that minor encroachments over adjoining Lots and the Common Area shall be permitted and there shall be valid easements for the maintenance of the encroachments as long as they shall exist. Each Lot and its Owner shall have and is granted an easement, appurtenant to such Lot over each adjoining Lot or the Common Area, as the case may be, for overhanging roofs and eaves, fireplace structures, and other structural components as originally constructed by the Declarant or, if partially or totally destroyed, as subsequently rebuilt or repaired in accordance with the original plans and specifications.

**Section 2. Driveway Easements.** Each Owner and the Association shall have and is hereby granted a nonexclusive easement for roadway and vehicular traffic purposes over and along the private driveways and paved parking areas within the Properties.

**Section 3. Blanket Utility Easements.** There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as approved by the Association's Board. The easements provided for in this section 3 shall in no way effect any other recorded easement on the Properties.

**Section 4. Maintenance and Repair Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Lots, Common Area, or Common Facilities, provided that any entry by the Association or its agents into any Lot shall only be undertaken in strict compliance with article III, section 6(b).

Section 5. Garage Easements. Lots and their Owners shall each have an exclusive easement and such exclusive easement is hereby granted for the use, possession, and enjoyment of the garage granted to the Owner, subject to the right of the Association to enter in and upon said garage upon no less than 24 hours' notice to the affected Owner to repair and maintain same and to enforce the terms of this Declaration and the rules and regulations of the Board promulgated hereunder; provided, however, that no notice shall be required in any case that the Board reasonably believes that immediate access is required to prevent the possibility of damage to property or injury to persons.

Section 6. Party Wall Easements. Each Residence that shares a Party Wall with an adjoining Residence and its Owner is declared to have an easement appurtenant, and the same is granted by Declarant, on, over, and upon such adjoining Residence for such Party Wall, including the right to enter upon such adjoining Lot to service and maintain such easement and service, maintain, repair, or replace the improvements constituting such Party Wall. Such entry shall be at reasonable times after prior notice, except that in case of emergency the right of entry shall be immediate. Except for any maintenance obligation or duty of the Association, each Lot and its Owner shall be responsible for the maintenance, repair, and reconstruction of that portion of the Party Wall which is located upon his or her Lot. No Owner shall alter the shape, size, or construction or use any materials different from those used in the initial construction of any such Party Wall without the written consent of the Association.

Section 7. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are declared to be subject to each and every easement, dedication and right-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 8. Priority of Easements. Wherever easements granted to the County or City are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

## ARTICLE X INSURANCE

Section 1. Types of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the Improvements and on any Common Facilities. If the insurance policy provides for a deductible amount, the Owner of the Lots directly affected by the fire or other casualty shall be assessed on a pro-rata basis for the deductible amount in all cases where a claim under that policy is filed. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. The form, content and term of the policy and its endorsements shall be satisfactory to all institutional First Mortgagees. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or its equivalent, in increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall provide amounts or coverage as shall be determined by the Board and shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in section 5 of this article X.



(b) Public Liability and Properties Damage Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) 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, earthquake insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable or that is required by any institutional First Mortgagee.

Section 2. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by section 1 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.

Section 3. 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.

Section 4. Individual Fire and Casualty Insurance Limited. Except as provided in this section, no Owner can separately insure his or her Residence or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under this article X, section 1(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this article X, section 1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Lot may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's Improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Lot.

Section 5. Trustee. All insurance proceeds payable under this article X, section 1, may, in the discretion of the Board, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such

trust. If repair or reconstruction is authorized pursuant to article X, the Association and any duly appointed trustee shall have the duty to contract for such work as provided in article X, section 5.

Section 6. 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 X, section 1. 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.

Section 7. Owner's Liability Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she desires, including loss assessment coverage. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

## ARTICLE XI DAMAGE OR DESTRUCTION

Section 1. Destruction; Proceeds Exceed 85 Percent of Reconstruction Costs. If there is a total or partial destruction of the Improvements in the Project, and if the available proceeds of the insurance carried pursuant to article X are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within 90 days from the date of destruction, Owners then holding at least 75 percent of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting or voting by written ballot in accordance with the Bylaws determine that such repair and reconstruction shall not take place. If a meeting or written ballot is called to vote on the matter, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place the Association shall be required to execute, acknowledge, and record in the office of the County Recorder of the County not later than 120 days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

Section 2. Destruction; Proceeds Less Than 85 Percent of Reconstruction Costs. If the proceeds of insurance carried pursuant to article X, section 1, are less than 85 percent of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt, unless within 90 days from the date of destruction, Owners then holding at least 66-2/3 percent of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting or by written ballot, determine that repair and reconstruction shall not take place. If a meeting or written ballot is called to vote on the matter, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the office of the County Recorder of the County not later than 120 days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

Section 3. Apportionment of Assessments. If the Owners determine to rebuild, pursuant to sections 1 and 2, above, each Owner shall be obligated to contribute his or her proportionate share of the cost of reconstruction of restoration over and above the available insurance proceeds. The proportionate share of each Owner shall be based upon the ratio that the square footage of the living areas of his or her Lot bears to the total square footage of the living area of all Lots. If any Owner fails or refuses to pay his or her proportionate share, the Association may levy a special assessment against the Lot of such Owner, which may be enforced under the lien provisions contained in article IV or in any other manner provided in this Declaration.

Section 4. Rebuilding Contract. If the Owners determine to rebuild, the Board or its authorized representative shall, after obtaining bids from at least two reputable contractors as required by the paragraphs above, and award the repair and reconstruction work to the lowest bidder

that otherwise meets the requirements set forth by the Board in soliciting bids. The Board shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to this contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 5. Rebuilding Not Authorized. If the Owners determine not to rebuild, then any insurance proceeds then available for such rebuilding shall be distributed to each Owner according to the relative fair market values of their Lots. The Board shall select an independent appraiser who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraisers' organization and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The Association shall have the duty, within 120 days from the date of destruction, to execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild.

Section 6. Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed \$20,000 in the case of Common Area improvements. The Association can levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in section 3, above, (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

## **ARTICLE XII CONDEMNATION**

Section 1. Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all the Owners and after notice to all Mortgagees, the Properties, or a portion of it may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board, but in no event less than the aggregate unpaid balance of all First Mortgages encumbering Lots within the Properties.

Section 2. Distribution of Proceeds of Sale. If a sale occurs under section 1, above, and the agreement of sale does not by its terms apportion the sale proceeds among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Lots affected by the sale, in accordance with SREA standards. The sale proceeds shall then be apportioned among the Owners, and their respective Mortgagees according to such relative values.

Section 3. Distribution of Condemnation Award. If the Properties, or a portion of it, are not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees.

Section 4. Appraisal If Condemnation Award Not Apportioned. If the judgment of condemnation does not by its terms apportion the award among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Lots affected by the condemnation, in accordance with SREA standards. The award shall then be apportioned among the Owners, and their respective Mortgagees, according to such relative values.

### ARTICLE XIII BREACH AND DEFAULT

Section 1. Remedy at Law Inadequate. 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 this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, 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, or by their respective successors in interest.

Section 2. Nuisance. Without limiting the generality of the section 1, above, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 3. Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

Section 4. Cumulative Remedies. The respective rights and remedies provided by this Declaration 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 different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 5. 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 or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

#### Section 6. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or his or her guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions 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 the suspension of his or her right to use recreational Common Facilities or suspension of his or her voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section 6. The initiation of legal action shall be subject to section 8, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of the California Civil Code section 1354 or otherwise by law.

(b) Schedule of Fines. The Board may implement 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 late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) 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 a 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 within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) Loss of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment 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, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of 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 subsection e, below.

(ii) Monetary Penalties. Monetary penalties imposed by the Association (A) for failure of a Member to comply with the Governing Documents, (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member, or (C) in bringing the Member and his or her Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure, provided that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and is given an opportunity to be heard before the Board or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments), the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

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 days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(f) Notices. Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(g) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall provide for notices and procedures satisfying the alternative dispute resolution requirements of California Civil Code section 1354 or comparable superseding statute and shall become part of the Association Rules.

Section 7. Court Actions; Arbitration; Mediation. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either of those actions coupled with a claim for monetary damages not in excess of \$5,000), the Association shall first comply with the provisions of California Civil Code section 1354, or comparable superseding statute, relating to alternative dispute resolution.

## ARTICLE XIV PROTECTION OF MORTGAGEES

The following provisions have been copied from the Original Declaration verbatim:

Section 1. Priority of Mortgage Lien. No breach of the covenants, conditions, or restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any first mortgage or first deed of trust ("Mortgage") made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot.

### Section 2. Curing Defaults.

(a) Lots. A mortgagee who acquires title by judicial foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration.

(b) Common Area. Mortgagees may, jointly or individually, pay taxes or other charges which are in default against the Common Area and may pay overdue premiums on hazard insurance, policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association, provided that Mortgagees have given reasonable notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

Section 3. Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

#### Section 4. Relationship with Assessment Liens.

(a) Subordination. The lien and power of sale herein provided for the collection of delinquent assessments and charges shall be subordinate to the lien of any First Mortgage which was recorded prior to the date the notice of delinquent assessment was recorded with the Sonoma County Recorder. The foreclosure of any lien created under any provision of these restrictions shall not operate to affect or impair the lien or such Mortgage; and (i) the foreclosure of the lien of such Mortgage, (ii) the acceptance of a deed in lieu of foreclosure of the Mortgage, or (iii) sale under a power of sale included in such Mortgage (hereinafter collectively referred to as "events of foreclosure"), shall not operate to affect or impair the assessment lien hereof, except as provided in Section (b) below.

(b) Subsequent Owner. Any Mortgagee or Owner who obtains title to a Lot through any of the events of foreclosure under a First Deed of Trust shall take title to such Lot free of any lien for unpaid assessments or charges against such Lot which accrued prior to the time such Mortgage or Owner comes into ownership of the Lot, except for liens or claims for a share of general assessments resulting from a reallocation of such assessments to all Lots within the development. Such subsequent Owner shall also not be personally liable for payment of assessments and charges accrued against his Lot prior to his taking title, except for a share of such general assessments resulting from a reallocation to all Lots. Such subsequent Owner shall take title subject to the lien and power of sale herein and the personal obligation for all assessments and charges which accrue subsequent to the events of foreclosure.

(c) No Release. Nothing in this Section shall be construed to release any Owner from his obligation to pay for any assessment levied pursuant to this Declaration.

Section 5. Approval of Mortgagees. Wherever the approval of Mortgagees is required in this Declaration, unless otherwise specified, such shall consist of written approval of at least Sixty-seven percent (67%) of all holders of the first Mortgage liens on Lots, based on one (1) vote for each Mortgagee. Such approval must be obtained by the same procedures prescribed by the Bylaws for voting by Members, whether in a meeting or by ballot without a meeting. Except with the prior approval of Mortgagees, the Association, the Board and/or other Members shall not do any of the following:

(a) Encumber, alienate, release, transfer, sell, subdivide, partition, abandon or hypothecate the Common Area or facilities, except to grant easements for utilities or similar purposes consistent with the intended use of the Common Area.

(b) Dissolve the Association or abandon or terminate the planned development or the maintenance of the Common Area.

(c) Terminate professional management, if any, of the Association and assume self-management.

(d) Amend a material provision of these Restrictions, the Bylaws or the Articles. A "material provision" is any provision which governs the following subjects:

i. The fundamental use and purpose for which the development was created, such as a change from residential use.

ii. Voting rights, powers and preferences.

iii. Assessments, assessment liens and subordination thereof.

- iv. The reserve for repair and replacement of common elements.
- v. Maintenance obligations on the Common Area and the Lots, and approval for alterations to the exterior appearance of improvements.
- vi. Casualty and liability insurance.
- vii. Reconstruction in the event of damage or destruction.
- viii. Rights to use the Common Area.
- ix. Annexation.
- x. Any provision which, by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

Section 6. Rights of First Mortgagees. Any first Mortgagee shall, upon written request to the Association, be entitled to:

(a) Inspection. Inspect the books and records of the Association during normal business hours.

(b) Financial Statements. Receive the annual financial statements of the Association within ninety (90) days following the end of the Association's fiscal year.

(c) Notice of Meetings. Receive written notice of all annual and special meetings of the Members or of the Board, in the manner prescribed, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of these Restrictions or the Bylaws which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give a Mortgagee the right to call a meeting of the Board of the Members for any purpose or to vote at any such meeting.

Section 7. Loan Status. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan secured by an encumbrance on a Lot.

Section 8. Membership Status. The Association shall provide, to any first Mortgagee who so requests in writing, written notification of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Mortgagee's Mortgage, which default has not been cured within thirty (30) days of a request therefor by the Association.

Section 9. Right of First Refusal. A Mortgagee who comes into possession of a Lot pursuant to a judicial foreclosure, a deed in lieu of foreclosure, or a trustee's sale shall be exempt from any right of first refusal now or hereafter granted herein to the Association.

Section 10. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the Articles or the Bylaws, the provisions of this Restriction shall control.

Section 11. Notice of Destruction or Taking. If the Common Area or any portion thereof, or any Lot and dwelling, is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any first Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean damage exceeding ten thousand dollars



(\$10,000). If request in writing by first Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such first Mortgagee.

Section 12. Notice, Generally. Any notice required by this Article to be given to Mortgagees shall be given in the manner prescribed in the Bylaws for notice to members, and at least thirty (30) days before the event being noticed, or within thirty (30) days after an event which arises without warning, such as destruction.

## ARTICLE XV NOTICES

Section 1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association: Woodgate Glen Owners Association at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

Section 2. Personal Service on Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

Section 3. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four days after deposit in the United States mail in Sonoma County, California.

## ARTICLE XVI NO PUBLIC RIGHTS IN THE PROPERTIES

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

## ARTICLE XVII AMENDMENT OF DECLARATION

Section 1. Amendment in General. This Declaration may be amended or revoked in any respect by the affirmative vote or assent by written ballot of a majority of the voting power of all Members. Notwithstanding the foregoing, the percentage of the Owners 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. With respect to any vote hereunder the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-owners shall bind all.

Section 2. Effective Date of Amendment. The amendment will be effective upon the recording in the Office of the Recorder of Sonoma County 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 1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights

of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

## ARTICLE XVIII GENERAL PROVISIONS

Section 1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, the Board, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by no less than seventy-five percent (75%) of the voting power of the Members of the Association terminating this Declaration shall be filed for recording in the Office of the County Recorder of County, California.

### Section 2. Construction of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subsection (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) 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.

(d) 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 this Declaration.

Dated: August 15, 2002

Woodgate Glen Owners Association,  
a California nonprofit corporation

By: Jan Story  
Jan Story, its President

By: Karl Byrn 8/21/02  
Karl Byrn, its Secretary

### Certification

On June 6, 2002, a majority of the Owners of Lots within the Properties voted by written assent to amend and restate the Original Declaration with this Declaration in accordance with the procedures for amendment set forth in the Original Declaration. Each of the undersigned declares under penalty of perjury under the laws of the State of California that he or she has read this certification and knows the contents thereof and that the same is true of his or her own knowledge.

Dated: August 15, 2002

  
Jan Story

Dated: August \_\_\_\_, 2002

  
Karl Byrn

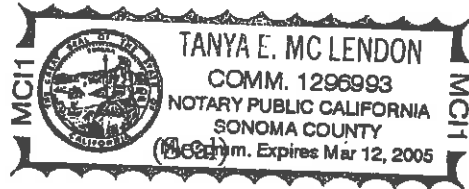
State of California )  
County of Sonoma ) ss

On August 15, 2002, before me, Tanya E. McLendon Notary Public, personally appeared Jan Story, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Tanya E. McLendon



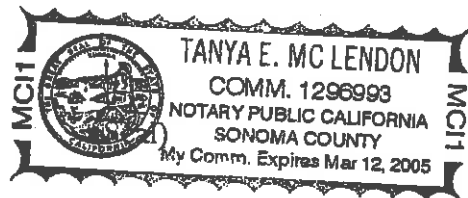
State of California )  
County of Sonoma ) ss

On August 21, 2002, before me, Tanya E. McLendon, Notary Public, personally appeared Karl Byrn, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Tanya E. McLendon



## EXHIBIT "A"

RESIDENTIAL LOTS 90A THROUGH 103A, INCLUSIVE AND 186A THROUGH 203A, INCLUSIVE, GARAGE LOTS 90B THROUGH 103B, INCLUSIVE AND 186B THROUGH 203B, INCLUSIVE, AND COMMON AREA LOT 225, AS SHOWN UPON THE MAP ENTITLED WOODGATE, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS AT PAGES 11, 12, 13, 14, AND 15.

LOTS 158 THROUGH 185, INCLUSIVE, AND COMMON AREA LOT 226, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 204 THROUGH 224, INCLUSIVE, AND COMMON AREA LOT 227, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 131 THROUGH 157, INCLUSIVE, AND COMMON AREA LOT 228, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 104 THROUGH 130, INCLUSIVE, AND COMMON AREA LOT 229, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 77 THROUGH 89, INCLUSIVE, AND COMMON AREA 230, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGE 11, 12, 13, 14 AND 15. SONOMA COUNTY RECORDS.

LOTS 1 THROUGH 25, INCLUSIVE, AND COMMON AREA LOT 231, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 26 THROUGH 48, INCLUSIVE, AND COMMON LOT 232, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, 14 AND 15, SONOMA COUNTY RECORDS.

LOTS 49 THROUGH 76, INCLUSIVE, AND THE COMMON AREA LOT 233, AS SHOWN ON THE MAP OF "WOODGATE", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SONOMA COUNTY ON AUGUST 5, 1983, IN BOOK 349 OF MAPS, AT PAGES 11, 12, 13, AND 14 AND 15, SONOMA COUNTY RECORDS.