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THE ORCHARD AT OAKMONT
DECLARATION
OF
RESTRICTIONS (CC&Rs)
(OAKMONT VILLAGE DECLARATION NO. 51)
A SENIOR CITIZEN HOUSING DEVELOPMENT

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void and may be removed pursuant to Section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

This Declaration contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. See Claims Procedures in Exhibit A. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

THE ORCHARD AT OAKMONT
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 OF
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THE ORCHARD AT OAKMONT
DECLARATION OF RESTRICTIONS (CC&Rs)
(OAKMONT VILLAGE DECLARATION NO. 51)
A SENIOR CITIZEN HOUSING DEVELOPMENT

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by THE WALNUT ORCHARD, LLC, a California limited liability company (the "Declarant") with reference to the following facts:

- A. Declarant is constructing a residential development consisting of 165 residential lots located on certain real property in Santa Rosa, California, more particularly described as Lots 1 through 80 on the subdivision map entitled "The Orchard at Oakmont Unit 1" filed in the records of Sonoma County, California, on October 11, 2005, in Book 682 of Maps at pages 45 through 50 and Lots 1 through 85 shown on the map entitled "The Orchard at Oakmont Unit 2" filed in the records of Sonoma County, California on November 9, 2005 in Book 684 of Maps at pages 13 through 18.
- B. Declarant desires to: (i) establish a senior citizen housing development within the meaning of Civil Code section 51.3; (ii) impose certain restrictions on the lots in the development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes; (iii) grant and describe certain easements that will be appurtenant to the lots; and (iv) establish a planned development within the meaning of Civil Code section 1351(k).

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

1.1 Affordable Housing Units. The 25 Maintenance Association Lots described in **Section 1.12** that are subject to deed restriction in conformance with Declarant's Affordable Housing Contract with the Housing Authority of the City of Santa Rosa.

1.2 Architectural Committee or Committee. The Architectural Committee described in **Section 8.1**, including the Oakmont Village Association Architectural Committee and/or the Declarant's Architectural Committee, as applicable.

1.3 Community Facilities. All real or personal property, including Improvements thereon, owned, to be owned, or leased by the Association, all for the use of Members subject to the Rules of the Association adopted from time to time by the Oakmont Village Board.

1.4 Declarant. The Walnut Orchard, LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

- 1.5 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.
- 1.6 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Residential Lots and all Improvements thereon.
- 1.7 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules of the Association, provided that the Claims Procedure attached as Exhibit A are not a part of the Governing Documents. The Rules include the Architectural Committee Guidelines and Standards, as updated and revised, from time to time.
- 1.8 Improvements. Any fixtures affixed to any Lot in the Development within the meaning of Civil Code section 660.
- 1.9 Lot or Residential Lot. Lots 1 through 80 shown on the Unit 1 Map and Lots 1 through 85 shown on the Unit 2 Map. Lot includes each Maintenance Association Lot described in Section 1.12.
- 1.10 Maintenance Association. The Orchard at Oakmont Maintenance Association, a California nonprofit mutual benefit corporation.
- 1.11 Maintenance Association CC&Rs. The Orchard at Oakmont Maintenance Association Declaration of Restrictions (CC&Rs) (Oakmont Village Declaration No. 52) recorded in the records of Sonoma County, California, that encumbers the Maintenance Lots.
- 1.12 Maintenance Association Lots. Lots 1, 2, 3, and 21 through 48 shown on the Unit 1 Map and Lots 14 through 37 shown on the Unit 2 Map.
- 1.13 Map. The subdivision map entitled "The Orchard at Oakmont Unit 1" filed for record in Sonoma County, California, on October 11, 2005, in Book 682 of Maps at pages 45 through 50 (individually, "Unit 1 Map") and the subdivision map entitled the "The Orchard at Oakmont Unit 2" filed for record in Sonoma County, California, on November 9, 2005, in Book 684 of Maps at pages 13 through 18 (individually, "Unit 2 Map").
- 1.14 Member. A member of the Oakmont Village Association.
- 1.15 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.
- 1.16 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.
- 1.17 Oakmont Village Articles. The Articles of Incorporation of the Oakmont Village Association and any amendments thereto.
- 1.18 Oakmont Village Association. Oakmont Village Association, a California nonprofit mutual benefit corporation.
- 1.19 Oakmont Village Board. The Board of Directors of the Oakmont Village Association.
- 1.20 Oakmont Village Bylaws. The Bylaws of the Oakmont Village Association and any amendments thereto.
- 1.21 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.
- 1.22 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.
- 1.23 Property. The land and Improvements shown on the Map.

1.24 Rules. Rules or regulations adopted by the Oakmont Village Board from time to time pursuant to the authority of Section 6.3.2.

1.25 Special Tax District. The Special Tax District entitled "City of Santa Rosa Special Tax District No. 2005-2 (The Orchard at Oakmont, Units 1 and 2) formed within the City of Santa Rosa for the purpose of maintaining the landscaping and related Improvements within a portion of the Development. All Lots described in Section 1.9 are subject to assessments levied by the District.

ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 1351(k) and consists of 165 Residential Lots.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Oakmont Village Association. The occupants of each Lot, their family members and guests have the right to access and use the Community Facilities in the same manner and subject to the same Rules and restrictions as apply to the remainder of the Oakmont Village Association.

2.3 Boundary Line Easements. As a part of the original construction of the Development, Declarant has constructed or will construct certain residential Improvements on or within three feet of the boundary line of an adjoining Lot. Each Lot on which such Improvements are constructed as the dominant tenement has an easement over the adjoining Lot as the servient tenement for purposes of maintaining, repairing and replacing any encroachments (such as roof overhangs) into the servient tenement and for purposes of access to that portion of the servient tenement as may be reasonably necessary to maintain (including repainting), repair or replace any portion of any Improvement on the dominant tenement that is located on or within three feet of the common boundary line. Prior to entering the servient tenement for purposes of maintenance, repair or replacement, the Owner or occupant of the dominant tenement shall provide the Owner or occupant of the servient tenement with at least three days' prior notice except in the event of an emergency.

2.4 Drainage Easement. Each Lot as the servient tenement are subject to an easement in favor of each other Lot as the dominant tenement for: (i) the retention, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as a part of the original construction of the Development; and (ii) the flow of surface and subsurface waters through and over any drainage system and/or drainage patterns established as a part of the original construction of the Development. Unless maintained by the Association, each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner shall at all times keep the drainage system and any intake drains, catch basins or area basins free and clear of debris at all times, and no Owner shall take any action that would in any manner interfere with the operation of the system. No Owner shall alter the grading on any Residential Lot without the prior consent of the Architectural Committee.

Declarant may have installed one or more "sub-drains" beneath the surface of a Lot. The sub-drains and all appurtenant improvements constructed or installed by Declarant, if any, provide for subterranean drainage of water from and to various portions of the Development. To ensure adequate drainage within the Development, it is essential that the sub-drains, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. No Owner may alter, modify, remove or replace any sub-drains located on the Owner's Lot without receiving prior written approval from the Architectural Committee and applicable local government agency.

2.5 Encroachment Easement. Each Lot as the dominant tenement has an easement over any adjoining Lot as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other residential structural Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, minor original construction changes during the course of construction. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure on any Lot is

partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching Improvement.

2.6 Other Easements. Each Lot is subject to such other easement(s), rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Lot, or any other appropriate public record.

2.7 Appurtenant Easements. Each easement described herein is an easement that is appurtenant to the dominant tenement, and any transfer of the dominant tenement automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the easement.

2.8 Reservation of Rights. Notwithstanding any property rights, including easements, granted or reserved herein, each Lot is subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct the Improvements that Declarant intends to construct on the Property, to advertise and sell Lots in the Development, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Lot to perform its obligations and duties under this Declaration;

(iv) the rights reserved in **Sections 14.11**;

(v) the right of the Association to adopt and enforce Rules as described in **Section 6.3.2**;

and

(vi) the right of agents of the City of Santa Rosa to enter any Lot subject to the 30-foot easement for the purpose of maintaining the landscaping and related Improvements thereon the cost of which is funded by assessments levied by the Special Tax District.

2.9 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Lot may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.10 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from other Lots as well as noises from outside.

2.11 Maintenance CC&Rs. The Maintenance Association Lots described in **Section 1.12** are subject to the Maintenance Association CC&Rs described in **Section 1.11** and each Owner is a member of the Maintenance Association described in **Section 1.10**. The Maintenance Association has been established to maintain certain landscaping and Improvements on these Maintenance Association Lots. The rights and duties of the Maintenance Association and the Maintenance Association Lot Owner are set forth in the Maintenance Association CC&Rs.

The Maintenance Association Lots are subject to the covenants, restrictions, rights, duties, benefits and burdens set forth in this Declaration and in the Maintenance Association CC&Rs, including the obligation to pay an assessment to both the Oakmont Village Association and the Maintenance Association.

2.12 Special Tax District. The Special Tax District described in Section 1.25 has been established to provide landscape maintenance services for the median in Oak Trail Drive and the landscaping that fronts Pythian Road and Highway 12 in the areas described in Exhibit B to the Maintenance Association CC&Rs. The funds to perform the maintenance are collected through special taxes levied by the District against the Lots in this Development. These taxes are due and payable at the same time as the real property taxes levied by the County of Sonoma. The City of Santa Rosa will provide the landscape maintenance services.

If the property Owners within the Special Tax District vote to repeal or reduce this special tax, the City of Santa Rosa's obligation to provide landscape maintenance services shall terminate. Effective on the first day immediately following the date the City terminates its landscape maintenance services, the Maintenance Association shall assume the maintenance duties. The Maintenance Association shall maintain the landscaping and irrigation system at the same or higher maintenance standards met by the City during the period the City performed the landscape maintenance services.

The Maintenance Association shall cooperate with the City and/or District in taking necessary steps to transfer control and billing responsibility for the irrigation system's water connection(s) and water meter(s) to the Maintenance Association.

All maintenance costs incurred by the Maintenance Association shall be allocated equally among the Lots in this Development. The rights, duties, benefits and burdens of the Maintenance Association with respect to the levying and collection of assessments to pay the maintenance costs, including but not limited to, the right to establish a lien against the Lot if any owner that is delinquent in the payment of assessments are described in Article 13 of the Maintenance Association CC&Rs. The Maintenance Association shall prepare a separate budget for the maintenance costs and any Lot, upon prior written notice to the Maintenance Association, may inspect the Maintenance Association's books and records relating to the maintenance costs.

ARTICLE 3 - Senior Housing Restrictions

3.1 Senior Housing Definitions. For purposes of this Article 3, the following terms shall have the following definitions:

3.1.1 Cohabitants: Persons living together as husband or wife or persons who are domestic partners within the meaning of Family Code section 297.

3.1.2 Permitted Healthcare Resident: A person hired to provide live-in, long-term or terminal healthcare to a Senior Citizen or a family member of the Senior Citizen providing that care. The care must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

3.1.3 Qualified Disabled Resident: A disabled person or person with a disabling illness or injury who is a child or grandchild of the Senior Citizen or a Qualified Permanent Resident who needs to live with the Senior Citizen or Qualified Permanent Resident because of the disabling condition, illness or injury. A "disabled" person means a person with a disability as defined in Civil Code section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability as defined in Civil Code section 54(b).

3.1.4 Qualified Permanent Resident: A person who satisfies both of the following requirements: (a) the person was residing with the Senior Citizen prior to the Senior Citizen's death, hospitalization, or other prolonged absence or prior to the dissolution of marriage with the Senior Citizen; and (b) the person is 45 years of age or older; was the spouse of the Senior Citizen, was a Cohabitant with the Senior Citizen, or was providing the primary physical or economic support to the Senior Citizen.

3.1.5 Senior Citizen: A person 55 years of age or older.

3.2 Age Restriction Occupancy Requirements. This Development is a development designed to provide housing for Senior Citizens and is intended to qualify as a senior citizen housing development within the meaning of Civil Code section 51.3(c)(4). On commencement of occupancy of the Residential Lot, at least one resident must be a Senior Citizen who intends to reside in the Residential Lot as his or her primary residence on a permanent basis. All other residents must qualify under one of the following categories: (i) the resident is 45 years or older; (ii) the resident is the spouse of the Senior Citizen; (iii) the resident and the Senior Citizen are Cohabitants; (iv) the resident is providing the primary physical or economic support to the Senior Citizen; (v) the resident is a Qualified Disabled Resident; or (vi) the resident is a Permitted Healthcare Resident.

Upon the death or dissolution of marriage or upon hospitalization or other prolonged absence of the Senior Citizen, a Qualified Permanent Resident or Qualified Disabled Resident may continue to reside in the Residential Lot as long as at least 80% of the occupied residences in the Development are occupied by a person age 55 or older and the continued occupancy by the Qualified Permanent Resident or Qualified Disabled Resident does not reduce the percentage to less than 80% so as to disqualify the Development as "housing for older persons" under federal law.

3.3 Termination of Disability. For any person who is a Qualified Disabled Resident and the disabling condition ends and the Qualified Disabled Resident does not otherwise qualify to reside in the Residential Lot under Section 3.2, the Board may require the formerly disabled resident to cease residing in the Development upon receipt of six months' written notice; provided that the Board may allow the person to remain a resident for up to one year after the disabling condition ends.

3.4 Termination of Occupancy Rights of a Qualified Disabled Resident. The Board may take action to prohibit or terminate the occupancy by a person who is a Qualified Disabled Resident solely because of a disability if the Board, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation; provided that the action to prohibit or terminate the occupancy may be taken only after satisfying each of the following conditions:

(i) the Board provides reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged and reasonable notice to the co-resident parent or grandparent of that person; and

(ii) the Board gives due consideration to the relevant, credible and objective information provided at the hearing. The evidence shall be taken and held in a confidential manner pursuant to a closed session by the Board in order to preserve the privacy of the affected person. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

3.5 Occupancy by a Permitted Healthcare Resident. A Permitted Healthcare Resident may occupy a Residential Lot during any period that the Permitted Healthcare Resident is actually providing live-in, long-term or terminal healthcare to the Senior Citizen for compensation. Compensation shall include provisions of lodging and food in exchange for care. A Permitted Healthcare Resident shall be entitled to continue his or her residency if the Senior Citizen is absent from the Residential Lot on satisfaction of each of the following conditions:

(i) the Senior Citizen became absent due to hospitalization or other necessary medical treatment and expects to return to the Residential Lot within 90 days from the date the absence began; and

(ii) the absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Residential Lot.

3.6 Temporary Residency. Nothing in this Article 3 shall prohibit the temporary residency of any person as a guest of the Senior Citizen or Qualified Permanent Resident. For purposes herein, "temporary residency" shall mean occupancy of a Residential Lot for no more than 90 days in any 12

consecutive-month period. Persons who otherwise qualify for residency and who otherwise meet one of more of the age restrictions in this Section 3 may continue their residency beyond 90 days by payment of the regular assessment specified in Section 7.9 being made on their behalf for beyond the 90 days.

3.7 Federal Law Requirements. The Development also is intended to qualify as "housing for older persons" exempt from the age restriction prohibition contained in the Federal Fair Housing Amendments Act of 1988 as amended by the Housing for Old Persons Act of 1995 (the "Acts"). In order to satisfy the requirements of the Acts, at least 80% of the occupied Residential Lots must be occupied by at least one person 55 years of age or older; and the Oakmont Village Association shall:

(i) publish and adhere to policies and procedures which demonstrate an intent by the Oakmont Village Association to provide housing for persons 55 years of age or older; and

(ii) adopt and implement procedures for the periodic verification of compliance with the age restrictions, including procedures for routinely determining the occupancy of each Lot, including the identification of whether at least one occupant is a Senior Citizen. The procedures shall provide for regular updates and no less than once every two years.

3.8 Applicable Law and Amendment Requirements. The provisions in this Article 3 are intended to comply with the housing for Senior Citizen requirements in Civil Code section 51.3 and the housing for older persons exemption under the Acts of 1988 and 1995 in effect as of the date this Declaration was recorded in the records of Sonoma County, California. To the extent of any conflict between the provisions of this Article 3 and applicable law regulating age restrictions in senior housing developments, the applicable law shall control. If the applicable law is subsequently modified or amended in any manner, the provisions of this Article 3 automatically shall be considered modified and amended in a like manner if necessary in order to remain in compliance with applicable laws.

ARTICLE 4 - Use Restrictions

4.1 Residential Use. Each Lot shall be used for residential purposes only; and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Lots may use a room or rooms in the residence as an office, provided that the primary use of the Lot is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Lot on any regular basis, and the use is in compliance with all local ordinances. The Oakmont Village Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Lots by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Lots in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration.

4.2 Renting. The Owner may rent his or her Lot provided each of the following conditions is satisfied:

- (i) the rental agreement must be in writing;
- (ii) the term of the rental shall be a minimum of six (6) months;
- (iii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, including specifically the age restrictions described in Article 3, the Oakmont Village Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement;

(iv) before commencement of the rental agreement, the Owner shall provide the Oakmont Village Association with the names of the tenants and each family member who will reside on the Lot and the address and telephone number of the Owner;

(v) Any Owner who rents his or her Lot shall keep the Oakmont Village Association informed at all times of the Owner's address and telephone number. Any rental agreement shall be subject to this Declaration, the Oakmont Village Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Oakmont Village Bylaws or the Rules, the Owner, on demand from the Oakmont Village Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant; and

(vi) An Owner of an Affordable Housing Unit is prohibited by deed restriction and contract from renting the Owner's Lot or the residence thereon unless specifically authorized by the Housing Authority of the City of Santa Rosa for an Owner with a hardship.

4.3 Nuisance. No activity shall be conducted on any Lot that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Lot. Every act or omission that violates in whole or in part any restrictions, conditions or covenants in this Declaration is declared to be and shall constitute a nuisance.

4.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed three-quarter ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes. There are additional parking restrictions in **Section 4.21**.

4.5 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

- (i) there shall be no more than (a) two dogs; or (b) two cats; or (c) one dog and one cat maintained by the occupants of any one residence unless otherwise authorized in writing by the Oakmont Village Board;
- (ii) no animal shall be maintained for any commercial purposes;
- (iii) the Lot Owner of the animal immediately shall clean up after his or her animal; and
- (iv) the Owner shall be responsible for any damage caused by any animal maintained on the Owner's Lot.

The Oakmont Village Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Oakmont Village Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Lot. The Oakmont Village Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Oakmont Village Board to comply with the Rules.

4.6 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Lot except as follows:

- (i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 8**.

Nothing herein shall be construed to restrict in any manner Declarant's or the Oakmont Village Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

4.7 Signs. Subject to the provisions of **Section 14.11**, the posting or displaying of any signs within the Development is subject to each of the following:

4.7.1 Non-Commercial Signs: The Oakmont Village Association may not prohibit posting or displaying of non-commercial signs, posters, flags or banners on or in an Owner's Lot, except as required for the protection of public health or safety or if the posting or display would violate any local, state or federal law. For purposes herein, a non-commercial sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the yard, window, door, balcony or outside wall of the separate interest but may not be made of lights, roofing, siding, paving materials, flora or balloons or any other similar building, landscaping or decorative component or include the painting of architectural surfaces. No non-commercial sign or poster in excess of nine square feet in size or non-commercial flag or banner in excess of 15 square feet in size shall be permitted anywhere in the development without the prior written approval of the Architectural Committee.

4.7.2 Commercial Signs: Except as otherwise expressly authorized by law and subject to the provisions of **Section 14.11**, no commercial signs of any nature shall be posted or displayed anywhere within the Development without the prior written consent of the Architectural Committee and pursuant to such guidelines as may be adopted by the Architectural Committee and the Oakmont Village Board which guidelines shall be in compliance with all applicable laws.

4.8 Clothesline. No exterior clothesline shall be erected or maintained on any Lot; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Lot.

4.9 Window Coverings. If interior surfaces of windows are covered, they shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white unless approved otherwise in writing by the Architectural Committee.

4.10 Subdivision. No Lot shall be subdivided into two or more lots without the prior written consent of the Oakmont Village Board.

4.11 Vehicle Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any vehicle except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

4.12 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Lot or any Improvement thereon except in compliance with the provisions of **Article 8**.

4.13 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Lot that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Lot that might increase the rate of or cause the cancellation of any insurance maintained by the Oakmont Village Association.

4.14 Sound Transmissions. No residential structure shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Lot, including, but not limited to, the replacement, modification or penetration of any wall that increases sound transmissions, resonances or reverberations to any other residential structure.

4.15 Building Location and Set-Back Line. Except with the approval of the Architectural Committee, no building shall be located on any Lot nearer to the front line or nearer to the side street line than the minimum building set-back shown on the tract plot plan. In any event, except with the approval of the Architectural Committee, no building shall be located on any Lot nearer than fifteen (15) feet to the front line and no further than thirty (30) feet from the front line or nearer than fifteen (15) feet to any side street line. Except with the approval of the Architectural Committee, no building shall be located nearer than five (5) feet to an interior lot line or nearer than fifteen (15) feet to the rear lot line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. Provisions in this Section 4.15 pertaining to the set-back of an interior Lot line shall not apply to a lot line which divides two dwelling units in a building complex such as a duplex.

4.16 Mining and Drilling. No derricks, pump or any other equipment or structure for boring, drilling, mining or extracting any oil, gas or mineral of any kind or nature whatsoever, shall be erected, placed or permitted upon any part of any Lot, nor shall any oil, gas, petroleum or other hydrocarbon substances be extracted from the surfaces of the subject property, provided, however, that nothing herein contained shall prevent the extraction or capturing of any oil, gas petroleum or other hydrocarbon substance or mineral or mineral substance by slant well drilling or by other similar operations so long as nothing shall be permitted to disturb the surface of any said Lot or any improvement thereon or occupants thereof.

4.17 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of any Lot and no odor shall be permitted to arise therefrom which is or may be detrimental to any Lot in the vicinity thereof or the occupants thereof.

4.18 Maintaining Drainage. No obstruction, diversion, bridging or confining of existing channels upon, under and/or across any portion of any Lots through which water, in times of storms or otherwise naturally flows, or through which water has been caused to flow artificially by Declarant in the development of the Property, shall be made by any person, provided, however, that the right is expressly reserved to Declarant and/or to any corporation owned or controlled by Declarant as an incident to the development of the Property, to change existing channels for the natural flow of water, and also to create channels and means of artificial drainage and water flow, and further, to cause reasonable increases or decreases in the amount of water which would in a state of nature flow into and through any such natural and artificial water channels or means of drainage. No change shall be made in the grade of any Lot as established by the developer or its engineers without the written consent of the Architectural Committee.

4.19 Temporary Structures. No structure of a temporary character, basement, tent, garage, barn or other out-building, or trailer, boat, recreation vehicle or truck shall be used on any Lot at any time as a residence either temporarily or permanently. Provided, however, that nothing herein contained shall apply to temporary or other buildings or structures erected, constructed, owned, used or maintained by Declarant or its agents or contractors, or by corporations owned and/or controlled by Declarant for use in connection with its construction, development, sale or lease of any part or portion of the Property.

4.20 Sight Distance at Intersections. No fence, wall, hedge, shrub, or other planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them thirty (30) feet from the intersection of the street lines or, in the case of a rounded property corner, from the intersection of the street property lines extended, except with the approval of the Architectural Committee. Except with the approval of the Architectural Committee, no tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.21 Parking and Storage. Carports and garages must be used for parking of authorized vehicles (defined below) and no other use is allowed that prevents this parking for the number of authorized vehicles for which the carport or garage was designed, if the residents of the applicable Lot operate that many. Additional authorized vehicles, including guests' may be parked on the Lot's driveway, space permitting, and on public streets.

4.21.1 Authorized Vehicles. Authorized vehicles are licensed and operative automobiles, pickup trucks, vans and sport utility vehicles. Other vehicles that may be parked in a carport/garage include bicycles, motorcycles and golf cars, if doing so does not prevent an authorized vehicle from being parked therein. Such other vehicles may not be parked in view from any other Lot or from a street.

4.21.2 Storage of Personal Property. Operation of hobby equipment is not allowed in carports or open garages. Storage of personal property is not allowed in open carports or open garages, except in enclosed storage areas. Storage of personal property or operation of hobby equipment is allowed in closed garages if doing so does not prevent authorized vehicles operated by the Lot's occupants from being parked therein.

4.21.3 Parking on a Lot. No vehicle of any type may be parked on a Lot unless approved by the Architectural Committee, except that such approval is not required for such additional authorized vehicles as may be parked on Lot owner's driveway per **Section 4.21.**

4.21.4 Structural Alterations of Garage Interiors. Structural alterations of garage interiors require the prior approval of the Architectural Committee.

4.22 Trees. No tree shall be planted in the front parkway or between the front dwelling unit line and the front property line without first securing written approval of the Architectural Committee.

4.23 Gravel Landscaping. Landscaping with gravel or rock shall not be permitted in the front yard of any Lot where such gravel or rock constitutes an excess of fifteen percent (15%) of the front yard exclusive of driveway and walks unless otherwise approved by the Architectural Committee.

ARTICLE 5 - Maintenance and Repair Obligations

5.1 Owner's Maintenance Obligations. Except for that portion of the Maintenance Association Lot maintained by the Maintenance Association as described in the Maintenance Association CC&Rs or maintained by the Special Tax District, each Owner shall maintain his or her Lot and all Improvements thereon in good condition and repair at all times. Each Owner shall be responsible for structural repairs to any Improvement, including the foundation, siding and roof. Shared Improvements with adjoining Lot Owners shall be maintained as described in **Section 5.3.** Each Owner shall have the Improvements on the Owner's Lot periodically inspected for wood-destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.

If any Owner fails to maintain his or her Lot as required herein, the Oakmont Village Association, after notice and hearing as described in the Oakmont Village Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Oakmont Village Association may levy a reimbursement assessment against the Lot in the manner described in **Section 6.3.** The Maintenance Association has similar privileges to perform necessary maintenance and repair as set forth in the Maintenance Association CC&Rs and Bylaws.

In order to reduce the potential for water damage (including mold growth) within the Residence, each Owner shall perform each of the following steps: (i) periodically inspect the Residence for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the Residence (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer;

and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the Residence.

In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in **Section 5.4** and (ii) commonly-accepted homeowners' maintenance obligations.

5.2 Owner's Landscaping Obligations. Except for the landscaping on the Maintenance Association Lot maintained by the Maintenance Association and the landscaping maintained by the Special Tax District, each Owner shall maintain the landscaping on the Owner's Lot in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation on the Owner's Lot. Maintenance shall include appropriate fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. If the Owner fails to properly maintain the landscaping on the Owner's Lot, the Oakmont Village Association or the Maintenance Association may enter the Lot and perform the maintenance under the procedures described in **Section 5.1** and shall have the same rights as described in **Section 5.1**.

There must be a scheme of water metering and layout of irrigations systems such that any meter and related system does not serve more area than that for which a single person or entity is responsible.

In addition to the foregoing, the Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines and Standards described in **Sections 5.4** and **8.2** and (ii) commonly-accepted homeowners' maintenance obligations.

5.3 Good Neighbor Fences. As part of the original construction of the Development, Declarant constructed fences on or about the common boundary line between two adjoining Lots that are to be shared by the adjoining Lot Owners. The adjoining Owners shall jointly share the maintenance and repair of the fence. The cost of the maintenance and repair shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. Each Lot as a dominant tenement shall have an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the fence.

Any dispute between the adjoining Lot Owners regarding the need for maintenance or repair, the quality or type of maintenance or repair, the allocation of costs, or any related issues shall be submitted to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. The dispute first shall be submitted to non-binding mediation for resolution. If the dispute cannot be resolved through mediation, the dispute shall be submitted to binding arbitration. Unless the parties agree otherwise, the dispute shall be heard by a single arbitrator in the county where the Development is located. In the arbitration proceeding, each party shall have full discovery rights as authorized by Code of Civil Procedure section 1283.05 or any successor statute thereto. The decision of the arbitrator shall be binding on the parties and may be enforced in any court of appropriate jurisdiction. The arbitrator in his or her discretion may award costs, including reasonable attorneys' fees, to the prevailing party.

5.4 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development with respect to the Improvements and landscaping to be maintained by that party (collectively the "Guidelines"). Each Owner shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Residential Lot, shall deliver the Guidelines pertaining to the Improvements and any landscaping to be maintained by the Owner to the transferee on or before title is transferred.

Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant as described in Section 4 of the Claims Procedure described in Exhibit A attached to this Declaration. Declarant may charge a reasonable fee for providing replacement copies.

5.5 Trash Removal. Each Lot Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal from the Owner's Lot unless the Oakmont Village Board or, with respect to Lots described in **Section 1.13**, the Maintenance Association's Board, approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in each dwelling's garage or otherwise out of sight from any neighbor's Lot or the street except on trash collection day if curbside service is provided.

ARTICLE 6 - The Oakmont Village Association

6.1 Membership. Membership in the Oakmont Village Association and voting rights and other rights of Members shall be as provided in the Oakmont Village Articles and/or the Oakmont Village Bylaws and nothing set forth in this Declaration is intended to vary, change, modify, or limit the provisions of the Articles and/or Bylaws. Each Owner of a fee (perpetual) estate in a Lot automatically shall be a Member of the Oakmont Village Association. If there is more than one fee title Owner of a Lot, each Owner shall be a Member. The holder of a security interest in a Lot shall not be a Member of the Oakmont Village Association except and until that holder obtains both the legal and equitable interest in the Lot.

Membership shall be appurtenant to the Lot and may not be separated therefrom. Any transfer of an Owner's interest in a Lot (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

6.2 Membership Rights. Membership rights, including voting rights, are set forth in the Oakmont Village Articles and Oakmont Village Bylaws.

6.3 Powers of the Oakmont Village Association. The Oakmont Village Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Oakmont Village Articles, Oakmont Village Bylaws and this Declaration. The Oakmont Village Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Oakmont Village Association under this Declaration, the Oakmont Village Articles and the Oakmont Village Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Oakmont Village Association or for the peace, health, comfort, safety and general welfare of the Owner of any property subject to the jurisdiction of the Association, including as to such express powers, without limitation, each of the following:

6.3.1 Levying Assessments: The Oakmont Village Board shall establish, fix and levy assessments against the Lots and collect and enforce payment of such assessments in accordance with the provisions of **Article 7** of this Declaration.

6.3.2 Adopting Rules: The Oakmont Village Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the development and/or the conduct of the business and affairs of the Oakmont Village Association, the use of the Community Facilities and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Oakmont Village Articles or the Oakmont Village Bylaws is inconsistent with or materially alters any Rules, the Declaration, the Oakmont Village Articles and the Oakmont Village Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Oakmont Village Association.

Any Rules adopted by the Oakmont Village Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Oakmont Village Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.

6.3.3 Borrowing Money: The Oakmont Village Board may borrow money to meet any anticipated or unanticipated cost of the Oakmont Village Association and, subject to the provisions of **Section 6.6(ix)**, may mortgage, encumber or pledge Oakmont Village Association assets (including, but not limited to, assessments) as security for such borrowing.

6.3.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Oakmont Village Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Oakmont Village Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Oakmont Village Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Oakmont Village Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 14.9**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Oakmont Village Board. Any legal action may be brought in the name of the Oakmont Village Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Oakmont Village Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Oakmont Village Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Oakmont Village Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Oakmont Village Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Oakmont Village Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Oakmont Village Board meets to consider or impose discipline upon a Member, the Oakmont Village Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Oakmont Village Board at the meeting.

(b) Hearing: If requested by the Member, the Oakmont Village Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Oakmont Village Association's legal counsel shall be entitled to attend the executive session meeting. The Oakmont Village Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Oakmont Village Board elects to impose discipline on the Member, the Oakmont Village Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Oakmont Village Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Lot on account of the failure of the Owner to comply with the provisions of the Declaration, Oakmont Village Articles, Oakmont Village Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Oakmont Village Association.

(e) Assessment Charges: The provisions of this Section 6.3.4 do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Oakmont Village Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

6.3.5. Delegating Duties: Except as may be limited by the Oakmont Village Bylaws, the Oakmont Village Board may delegate any of the Oakmont Village Association's powers and duties to its employees, committees or agents, including a professional management agent.

6.3.6 Implementing Special Fees: The Oakmont Village Board may implement special fees to reimburse the Oakmont Village Association for special costs incurred as a result of actions taken by Owners.

6.3.7 Dispute Resolution Procedures: The Oakmont Village Board shall implement dispute resolution procedures for disputes between the Oakmont Village Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

6.4 Duties of the Oakmont Village Association: In addition to the duties described in the Oakmont Village Articles or Oakmont Village Bylaws, or elsewhere in this Declaration, the Oakmont Village Association shall have the duty to manage and maintain the Community Facilities, prepare and distribute financial statements, reports and the other documents and notices described in Section 6.10, levy and collect assessments as described in Article 7, prepare when required the reserve studies described in Section 7.3 and annually review and implement adjustments as required, and procure, maintain and review the insurance as described in Article 9. The Oakmont Village Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Oakmont Village Articles, Oakmont Village Bylaws, Rules or Oakmont Village Board resolutions.

6.5 Reporting and Notice Requirements. The Oakmont Village Association shall prepare and distribute the documents described in this Section 6.5.

6.5.1 Pro Forma Operating Budget. A Pro Forma Operating Budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

- (1) Estimated revenue and expenses on an accrual basis.
- (2) A summary of the Oakmont Village Association's reserves based on the most recent reserves review or study conducted pursuant to Section 7.3, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:
 - (A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Oakmont Village Association is obligated to maintain (collectively the "Major Components");
 - (B) as of the end of the fiscal year for which the study was prepared:
 - (i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;
 - (ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and
 - (iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Oakmont Village Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or

disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 6.5.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Oakmont Village Association is obligated to issue a review of its financial statement pursuant to **Section 6.5.2** below, the Oakmont Village Association may include in the review a statement containing all of the information required by this **Section 6.5.1(2)(B)(iii)**; and

(C) the percentage that the amount in **Section 6.5.1(2)(B)(ii)** is to the amount in **Section 6.5.1(2)(B)(i)**;

(3) A statement as to both of the following:

(A) whether the Oakmont Village Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment; and

(B) the mechanism or mechanisms by which the Oakmont Village Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in **Section 1365.2.5(b)(4)** and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Oakmont Village Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Oakmont Village Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Oakmont Village Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Oakmont Village Association shall provide the copy to the Member by first-class mail at the expense of the Oakmont Village Association, which copy shall be mailed within five days of the receipt of the request.

6.5.2 Financial Statement Review. A review of the financial statement of the Oakmont Village Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Oakmont Village Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

6.5.3 Policies and Practices Statement. A statement of the Oakmont Village Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

6.5.4 Governing Documents. Copies of this Declaration, the Oakmont Village Articles, Oakmont Village Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this **Section 6.5.4** may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Oakmont Village Association maintains these items in electronic form. The Oakmont Village Board may impose a fee to provide these materials but not to exceed the Oakmont Village Association's reasonable costs in preparing and reproducing the material.

6.5.5 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Oakmont Village Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 6.5.1** is distributed to the Members.

6.5.6 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 6.5.1** is distributed to Members or in the manner set forth in Corporation's Code section 5016 and shall include a description of the Oakmont Village Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

Failure by any member of the Oakmont Village Association to comply with the dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your rights to sue the Oakmont Village Association or another member of the Oakmont Village Association regarding enforcement of the governing documents.

6.5.7 Insurance Summary. A summary of the Oakmont Village Association's property, general liability, earthquake, flood and fidelity policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Oakmont Village Association's fiscal year. The summary shall include the following information on the Policies:

- (A) the name of the insurer;
- (B) the type of insurance;
- (C) the Policy limits of the insurance; and
- (D) the amount of deductibles, if any.

The Oakmont Village Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Oakmont Village Association receives any notice of non-renewal of a Policy, the Oakmont Village Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 6.5.7** is specified in the insurance policy declaration page, the Oakmont Village Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 6.5.7** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Oakmont Village Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Oakmont Village Association member, upon request and reasonable notice, may review the Oakmont Village Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Oakmont Village Association maintains the policies of insurance specified in this summary, the Oakmont Village Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any

deductible that applies. Oakmont Village Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

6.5.8 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365.1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Oakmont Village Association's fiscal year. The notice shall be printed in at least 12-point type.

6.5.9 Architectural Approval/Dispute Resolution Procedure Notices. The Oakmont Village Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 8** for physical changes to the Improvements on the Lots. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Oakmont Village Board as required under **Section 6.5.7**.

6.5.10 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Oakmont Village Association of a secondary address. If a secondary address is provided, the Oakmont Village Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

6.6 Limitations on Authority of the Oakmont Village Board. The Oakmont Village Association is prohibited from taking any of the following actions:

- (i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Oakmont Village Association shall not deny an Owner or occupant physical access to his or her Lot;
- (ii) the Oakmont Village Association may not voluntarily assign or pledge the Oakmont Village Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Oakmont Village Association; however, the foregoing provision may not restrict the right or ability of the Oakmont Village Association to assign any unpaid obligations of a current or former Member to a third party for purposes of collection;
- (iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Lot; or
- (iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Lots is required to occur.
- (v) pay compensation to members of the Oakmont Village Board or to officers of the Oakmont Village Association for services performed in the conduct of the Oakmont Village Association's business, provided that the Oakmont Village Board may reimburse a member or officer for expenses incurred in carrying on the business of the Oakmont Village Association;

6.7 Access to Oakmont Village Association Records. The Oakmont Village Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection.

ARTICLE 7 - Assessments

7.1 Obligations to Pay Assessments. The Owner of each Lot is obligated to pay any assessments levied against that Owner's Lot on or before the due date of the assessment. If there is more than one Owner of the Lot, the obligation is joint and several. Each Owner on acceptance of a deed to a Lot automatically personally assumes the obligation to pay any assessments against the Owner's Lot (including, but not limited to, that portion of the annual regular assessment not yet due and payable) and agrees to allow the Oakmont Village Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Lot regardless of the Owner's possession or use of the Lot or any services rendered by the Oakmont Village Association. The Owner has no right or power to commit or omit any act in an attempt to eliminate or reduce the assessments against that Owner's Lot. An assessment shall be both a personal obligation of the Owners of the Lot against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Lot. Any Owner who transfers a Lot shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Lot on which a lien for a delinquent assessment has been established will take title subject to the lien and the Oakmont Village Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment.

7.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Oakmont Village Association, the Oakmont Village Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Oakmont Village Board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of **Section 6.5.1**, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Oakmont Village Board. After making any adjustments that the Oakmont Village Board considers appropriate and subject to such Member approval as may be required by **Section 7.6**, the Oakmont Village Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in **Section 7.3**.

If the Oakmont Village Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Oakmont Village Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

7.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Oakmont Village Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 6.5.1** that the Oakmont Village Association is obligated to maintain and repair. For all purposes in this Declaration and in the Oakmont Village Bylaws, reserve accounts shall mean: (i) the funds that the Oakmont Village Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Oakmont Village Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Oakmont Village Board or one officer who is not a member of the Oakmont Village Board and a member of the Oakmont Village Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components which the Oakmont Village Association is obligated to maintain.

Notwithstanding the foregoing, the Oakmont Village Board may authorize the temporary transfer of money from a reserve fund to the Oakmont Village Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Oakmont Village Board has made a written finding, recorded in the Oakmont Village Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Oakmont Village Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Oakmont Village Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 7.6** and Civil Code section 1366(b).

If the Oakmont Village Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Oakmont Village Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Oakmont Village Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Oakmont Village Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Lot regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Oakmont Village Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components which the Oakmont Village Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Oakmont Village Association, which excludes the Oakmont Village Association's reserve account for that period. **The Oakmont Village Board shall review this study annually and shall consider and implement necessary adjustments to the Oakmont Village Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

- (i) identification of the Major Components which the Oakmont Village Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life; and
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

7.4 **Special Assessments.** Subject to the restrictions described in **Section 7.6**, the Oakmont Village Board may levy a special assessment if the Oakmont Village Board in its discretion determines that the Oakmont Village Association's available funds are or will become inadequate to meet the estimated expenses of the Oakmont Village Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital

Improvements, inadequate insurance proceeds, or other unanticipated expenses. The Oakmont Village Board may levy the entire special assessment immediately or levy it in installments over a period the Oakmont Village Board considers appropriate.

7.5 Reimbursement Assessments. The Oakmont Village Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Oakmont Village Association for any costs incurred or to be incurred by the Oakmont Village Association as the result of any act or omission of any Owner or occupant of any Lot or their family members, guests, agents or pets. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Oakmont Village Association and the amount paid exceeds the costs incurred, the Oakmont Village Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Oakmont Village Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Oakmont Village Association may enforce the delinquent assessment as described in **Section 7.10**.

In addition to reimbursing the Oakmont Village Association for costs necessary to repair any Property that is maintained by the Oakmont Village Association, the Oakmont Village Association may seek reimbursement for any costs incurred by the Oakmont Village Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Lot into compliance with this Declaration, the Oakmont Village Articles, Oakmont Village Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided to the Owner as described in **Section 6.3.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Oakmont Village Association as a disciplinary measure for violation of the Declaration or Rules) become a lien against the Owner's Lot that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Oakmont Village Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

7.6 Assessment Increase Restrictions. The Oakmont Village Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Oakmont Village Board may not: (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Oakmont Village Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Oakmont Village Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Oakmont Village Association at which a quorum is present. For purposes of this **Section 7.6**, a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:

- (i) an extraordinary expense required by an order of court;
- (ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Oakmont Village Association is responsible to maintain where a threat to personal safety on the Property is discovered; and/or
- (iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Oakmont Village Association is responsible to maintain that could not have been reasonably foreseen by the Oakmont Village Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Oakmont Village Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment.

If the Oakmont Village Board fails to distribute the Pro Forma Operating Budget as required by **Section 6.5.1** for any fiscal year, the Oakmont Village Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Oakmont Village Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a "quorum" means more than 50% of the Owners of the Oakmont Village Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

7.7 Commencement of Regular Assessments. Annual regular assessments shall commence for each Lot on the date a certificate of occupancy or equivalent occupancy permit is issued on that Lot by the City of Santa Rosa. No Lot shall be subject to any special or reimbursement assessments until regular assessments have commenced against that Lot.

7.8 Due Dates of Assessments. Unless otherwise directed by the Oakmont Village Board or unless accelerated as described herein, the annual regular assessment shall be collected in monthly installments and shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Oakmont Village Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Oakmont Village Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 14.14**.

Any annual regular assessment installment (including any accelerated installments), special assessment, or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Oakmont Village Board from time to time, not to exceed the maximum amount permitted by law.

7.9 Allocation of Regular and Special Assessments. Regular assessments (known as "general charge and assessment" in other declarations in Oakmont) levied by the Oakmont Village Board for each dwelling unit on a Lot shall be calculated on the basis of the number of persons lawfully residing in each such dwelling unit, provided, however, that vacant dwellings shall be assessed as if they had one occupant. Special assessments levied by the Oakmont Village Board shall be allocated in equal amounts among the Residential Lots.

Notwithstanding anything herein to the contrary, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the Oakmont Village Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Oakmont Village Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

7.10 Enforcement of Delinquent Assessments. The Oakmont Village Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

7.10.1 Personal Obligation. The Oakmont Village Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 7.10.2**.

7.10.2 Assessment Lien. Except as otherwise provided in **Section 7.5** and subject to the provisions of **Section 7.10.3**, the Oakmont Village Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Oakmont Village Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Oakmont Village Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Oakmont Village Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

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

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Oakmont Village Association.

(4) The right to request a meeting with the Oakmont Village Board as provided by **Section 7.10.2(b)(3)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Oakmont Village Association pursuant to the Oakmont Village Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Oakmont Village Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Oakmont Village Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Oakmont Village Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Oakmont Village Association shall provide a mailing address for overnight payment of assessments.

(1) Prior to recording a lien for delinquent assessments, the Oakmont Village Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Oakmont Village Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Oakmont Village Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Oakmont Village Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Oakmont Village Association intends to initiate a judicial foreclosure.

(2) The decision to record a lien for delinquent assessments shall be made only by the Oakmont Village Board and may not be delegated to an agent of the Oakmont Village Association. The Oakmont Village Board shall approve the decision by a majority vote of the Oakmont Village Board members in an open meeting. The Oakmont Village Board shall record the vote in the minutes of that meeting.

(3) An Owner may submit a written request to meet with the Oakmont Village Board to discuss a payment plan for the delinquent assessment. The Oakmont Village Association shall provide the Owners the standards for payment plans if any exist. The Oakmont Village Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled

Oakmont Village Board meeting within that period, in which case the Oakmont Village Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Oakmont Village Association's ability to record a lien on the Owner's Lot to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Oakmont Village Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(c) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 7.8**, shall be a lien on the Owner's Lot from and after the time the Oakmont Village Association causes to be recorded with the county recorder of the county in which the Lot is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 7.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 7.10.2(e)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Oakmont Village Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Oakmont Village Association or by the Person designated by the Oakmont Village Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Oakmont Village Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Oakmont Village Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Oakmont Village Association: (i) as a means of reimbursing the Oakmont Village Association for costs incurred by the Oakmont Village Association in the repair of damage to Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Lot enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(d) A lien created pursuant to **Section 7.10.2(c)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 11**.

(e) Subject to the limitations of this **Section 7.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 7.10.2(c)**, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d.

(f) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(g) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Oakmont Village Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95.

(h) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Oakmont Village Association shall send additional copies of any notices required by this section to the secondary address provided. The Oakmont Village Association shall notify Owners of their right to submit secondary addresses to the Oakmont Village Association, at the time the Oakmont Village Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Oakmont Village Association in a manner that shall indicate the Oakmont Village Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Oakmont Village Association shall only be required to send notices to the indicated secondary address from the point the Oakmont Village Association receives the request.

(i) This **Section 7.10.2** is subordinate to and shall be interpreted in conformity with **Section 7.10.3**.

(j) If the Oakmont Village Association fails to comply with the procedures set forth in this **Section 7.10.2**, prior to recording a lien, the Oakmont Village Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Oakmont Village Association and not by the Lot Owner.

7.10.3 Assessment Enforcement Restrictions.

(a) If the Oakmont Village Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Oakmont Village Association chooses to proceed by an action in small claims court, and prevails, the Oakmont Village Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in **Section 7.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Lot upon which the Oakmont Village Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. If the Oakmont Village Association chooses to record a lien under these provisions, prior to recording the lien, the Oakmont Village Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

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

(b) If the Oakmont Village Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any

assessments that are more than 12 months delinquent, the Oakmont Village Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Lot, the Oakmont Village Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Oakmont Village Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Oakmont Village Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Oakmont Village Board and may not be delegated to an agent of the Oakmont Village Association. The Oakmont Village Board shall approve the decision by a majority vote of the Oakmont Village Board members in an executive session. The Oakmont Village Board shall record the vote in the minutes of the next meeting of the Oakmont Village Board open to all members. The Oakmont Village Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Oakmont Village Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The Oakmont Village Board shall provide notice by personal service to an Owner of a Lot who occupies the Lot or to the Owner's legal representative, if the Oakmont Village Board votes to foreclose upon the Lot. The Oakmont Village Board shall provide written notice to an Owner who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Oakmont Village Association. In the absence of written notification by the Owner to the Oakmont Village Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Oakmont Village Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

7.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Oakmont Village Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Oakmont Village Association has recorded a lien for a delinquent assessment in error, the Oakmont Village Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2006. If these sections are amended or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Oakmont Village Board should confirm the current statutory requirements.

7.11 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Oakmont Village Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Oakmont Village Association, the Owner or occupant of the Owner's Lot is in violation of any of the provisions of this Declaration, the Oakmont Village Articles, Oakmont Village Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Oakmont Village Association may charge a fee

to provide this information provided the fee shall not exceed the Oakmont Village Association's reasonable cost to prepare and reproduce the requested items.

7.12 Restrictions on Oakmont Village Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Oakmont Village Board or for company purposes in connection with any other election, except to the extent necessary to comply with duties of the Oakmont Village Association imposed by law.

ARTICLE 8 - Architectural Review

8.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Oakmont Village Board. The Committee established by the Declarant shall be known for purposes of this Declaration as the Declarant's Architectural Committee. An Architectural Committee for the Oakmont Village Association already exists. It is known as the Oakmont Village Association Architectural Committee. With respect to the Property subject to this Declaration, only one of the Committees shall have jurisdiction at any one point in time, as specified in **Sections 8.1.1 and 8.1.2.**

8.1.1 Declarant's Architectural Committee. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Oakmont Village Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Lots in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the Development, the Oakmont Village Board shall have the power to appoint one member to the Committee until 90% of the Lots of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Declarant's Architectural Committee shall dissolve and cease to exist and the Association Architectural Committee shall accept and exercise full jurisdiction thereafter. The Declarant may voluntarily dissolve and disband its Committee at an earlier time, in which case the Association Architectural Committee shall take jurisdiction forthwith. The Declarant's Architectural Committee shall follow and may not amend the Guidelines and Standards specified in **Section 8.2** and elsewhere in this Declaration.

8.1.2 Association Architectural Committee. The Oakmont Village Association Architectural Committee shall have sole jurisdiction within the Development upon the first of the following events to occur: (a) failure of the Declarant to appoint a Declarant's Architectural Committee within one month after the first sale of a Lot within the Development or (b) the dissolution of the Declarant's Architectural Committee as specified in **Section 8.1.1.** The Oakmont Village Association Architectural Committee is appointed by the Oakmont Village Board and has three voting members.

8.2 Joint Provisions. The following provisions, including **Sections 8.3 through 8.13** apply equally to both Architectural Committees unless specified to the contrary for particular provisions. The Oakmont Village Board appointees may but need not be Members of the Oakmont Village Association and shall serve at the will of the Oakmont Village Board. The term of the members shall be as designated by the Declarant or by the Oakmont Village Board depending on which person is making or has made the appointments. If a member is removed from the Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members, except that the Association's Architectural Committee may appoint a representative who may but need not be a member of the Committee, which representative may exercise all of the powers of the Committee as set forth in this Declaration, and the acts of such representative for and on behalf of the Committee within the scope of the powers of the Committee as set forth in this Declaration shall be deemed that acts of the Committee for all purposes.

The Committee shall meet at such times and places as it shall designate.

The Oakmont Village Association has adopted the Oakmont Village Association Architectural Guidelines and Standards ("Guidelines and Standards") regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed on the Lots and has established a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The Guidelines and Standards shall comply with the use restrictions described in **Article 4**. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Lots in the Development; (ii) effect of the proposed location on neighboring Lots; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Lots; (iv) proper facing of elevations with respect to nearby streets and adjoining Lots; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the Guidelines and Standards. In the event there are inconsistencies or contradictions between the provisions of this Declaration and the Guidelines and Standards, the provisions of this Declaration shall prevail.

8.3 Approval Requirements. None of the following actions shall take place anywhere within the Development without the prior written approval of the appropriate Architectural Committee:

- (i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any building, outbuilding, structure, exterior wall, windows, exterior doors, exterior stairs, fence, sign, garage, trash enclosure, storage area, berms, utilities, fixtures (gas, electricity, telephone, water, or otherwise) or other Improvements visible from any other Lot;
- (ii) any planting or landscaping (including the removal of any tree);
- (iii) any grading, excavation or site preparation;
- (iv) any placement or storage of building materials or temporary structures (including trailers, tents, mobile homes, offices or vehicles);
- (v) any replacement or modification to any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling if the replacement, modification, penetration or disturbance could result in any increase in the sound transmissions, resonances or reverberations from the residence to any adjoining residence; or
- (vi) any modification or alteration, or addition of storage fixtures within a garage that may affect the ability to park vehicles therein.

If the Committee has established landscaping guidelines, the installation or replacement of all landscaping and planting (including tree removal) shall comply with the guidelines, subject to such variances as may be approved in writing by the Committee.

Any Owner may repaint the interior of the Owner's residence in any color the Owner desires or remodel the interior, provided the remodeling does not in any manner alter the exterior appearance of the building or, in the case of any residences that immediately abut an adjoining residence, result in the increase of the sound transmissions, resonances or reverberations from the residence to the adjoining residence.

8.4 Architectural Rules. The Committee, from time to time, may adopt, amend and repeal rules and regulations to be known as "Architectural Rules". The Rules shall be consistent with the requirements set forth in this **Article 8**, including the Guidelines and Standards described in this **Section 8.2**. The Architectural Rules shall interpret and implement the provisions of this **Article 8**, and shall contain the following mandatory elements and such other elements as the Committee considers necessary or advisable:

8.4.1 Application Requirements. The Architectural Rules shall set forth the necessary documents to be submitted by the applicant. Unless otherwise waived in writing by the Committee, or an authorized representative thereof, the application shall include plans and specifications prepared by an architect or a licensed building designer which adequately describe the proposed work and shall include the

following to the extent applicable to the proposed work: plot layout; location of all existing and proposed Improvements; setbacks from Lot lines of all existing and proposed Improvements; proposed drainage; exterior designs; roofing and siding materials; elevations; of all Improvements; floor plans; location of all heating or cooling equipment; decking; screening devices; bearing walls and retaining walls; materials and colors; landscaping plans; construction schedule; and such other information as the Committee shall reasonably require. Landscaping plans shall include a complete and professionally prepared plan including the name, location and sizes of all proposed trees, sodding, shrubbery, lawn areas, hardscape and irrigation system. The plans shall identify any trees scheduled for removal and describe the plans for replanting trees and vegetation.

If the proposed work does not merit extensive plans and specifications, the Committee may, but shall not be obligated to, waive or modify any of the above requirements upon receipt of a written request from the applicant to do so.

An application shall not be considered a "complete application" for purposes of **Section 8.5** until the Committee has received all the required documents. After the submission of an application, the applicant may request in writing from the Committee confirmation that the application is complete. The initial confirmation request may be made no sooner than seven calendar days after the initial application has been received by the Committee. If the Committee fails to respond within 30 days of receipt of the request, the application shall be considered complete for purposes of **Section 8.5** only. The foregoing does not preclude the Committee from requesting additional documentation unless the application has been deemed approved pursuant to the provisions of **Section 8.5**. If a timely request for additional documentation is received, this documentation or the failure to receive the documentation can be considered by the Committee in rendering its decision on the proposed work.

The application, any request for confirmation of a complete application, any additional documents requested by the Committee, and any other notices or documents given to the Committee under the provisions of this **Article 8** shall be considered received by the Committee in accordance with the "receipt" procedures described in the Architectural Rules or, if there are no such procedures, on the date of personal delivery to the Oakmont Village Association's manager, the President of the Oakmont Village Association, or the Chair of the Committee or, if mailed, on the date receipt is acknowledged on the return receipt when mailed certified mail, return receipt requested, addressed to the President of the Oakmont Village Association or Chair of the Committee and mailed to the principal office of the Oakmont Village Association.

For changes or modifications to landscaping or to the exterior of any structure on any Maintenance Association Lot, the applicant must also obtain approval of the Board of Directors of the Maintenance Association. Such approval shall be on a form provided by the Architectural Committee and shall be included in the application packet submitted by applicant to the Committee.

8.4.2 Application Fee. The Architectural Rules may require that the application be accompanied by a reasonable application fee to pay for any out-of-pocket costs incurred by the Committee in reviewing any plans and specifications. This fee may include the cost of retaining outside consultants for purposes of assisting the Committee in reviewing the plans and specifications. If, during the review process, the Committee determines that additional fees will be necessary to cover additional out-of-pocket costs, the Committee may require the applicant to advance any additional fees before the review can be completed. The proposed work can be denied for the sole reason that the applicant has failed to pay the required fees.

8.4.3 Guidelines and Variances. The Architectural Rules may include guidelines for any proposed work that are not inconsistent with any restriction contained in this Declaration. The guidelines can apply to structures and/or landscaping. The guidelines may set forth specific standards regarding color, height, quality, setbacks, materials, size and such other standards as the Committee may adopt from time to time that are consistent with the approval conditions described in **Section 8.5**. The Committee, from time to time and upon request from the applicant, may grant variances from any guidelines established by the Committee. Under no circumstances shall the Committee have any authority to grant any variance that would result in violation of any restrictions contained in this Declaration.

8.4.4 Hearings (Optional). If the Committee, in its sole discretion, elects to conduct a hearing on an application, reasonable notice of the time, place and proposed agenda for the Committee's

hearing shall be distributed prior to the date of a hearing to any applicant whose application is scheduled to be heard. The applicant shall be entitled to appear at the hearing, shall be entitled to be heard on the matter, and may be accompanied by the applicant's architect, engineer and/or contractor. Notice also shall be given to such adjoining or nearby Lot Owners that the Committee reasonably believes could be affected by the proposed work. These Owners shall be entitled to attend the hearing and given reasonable opportunity to present their views on the proposed work.

8.4.5 Preliminary Approval Procedures. The Committee may adopt procedures for preliminary approval. This would enable applicants who are proposing to make Improvements an opportunity to obtain guidance and comments from the Committee prior to the expenditure of substantial sums on completed plans and specifications. Preliminary approval shall be granted if the Committee, in its sole discretion, determines that it would approve final plans as described in **Section 8.5**. Pending or denying preliminary approval, the Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for guidance of the applicant. Any preliminary approval granted by the Committee shall be effective for a period of 90 days from the date of issuance or such longer period as, in the Committee's discretion, may be granted. During this period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Committee. In no event shall any preliminary approval of a proposed Improvement constitute final approval authorizing construction of the Improvement. The purpose of the preliminary review procedure is to give the applicant a measure of security in proceeding with the proposed Improvement, committing funds thereto. Final approval shall be based on a complete submittal conforming to the requirements of this **Section 8.4**.

8.5 Basis for Approval. The Committee shall not approve the application unless the Committee, in its sole discretion, finds all of the following conditions have been satisfied:

- (i) the applicant has complied with the application procedures described in **Section 8.4** and any additional procedures adopted by the Committee;
- (ii) the proposed work is in compliance with the use restrictions contained in the Declaration, the Architectural Rules, and, unless a variance is granted, any guidelines established by the Committee under **Section 8.4.3** in effect at the time the application was submitted to the Committee;
- (iii) the proposed work is in compliance with all governmental laws and ordinances (the Committee shall have no duty to independently confirm such compliance);
- (iv) if the proposed work involves any exterior modifications or additions, the work is in harmony with the external design of other structures and/or landscaping within the Development and is consistent with the architectural and aesthetic standards prevailing within the Development and with the overall general plan and scheme of the Development; and
- (v) if the residence immediately abuts the wall of an adjoining residence, the proposed work will not unreasonably increase the sound transmissions, resonances or reverberations to the other residence.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Lot as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Lot or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

The approval of the Committee (or the Association or its Board or Declarant) of any plans and specifications, plot plan, grading or any other plan or matter requiring approval under this Declaration shall not be a waiver of any right to withhold approval as to a similar or other feature or element embodied therein and subsequently or additionally submitted for approval.

In approving any proposed work, the Committee may grant conditional approval on the adoption of modifications to the proposed work that in the Committee's judgment are necessary to bring the proposed work into compliance with the approval conditions contained in this **Section 8.5**. In addition, the Committee may impose reasonable construction restrictions, such as construction hours, dust controls, noise abatement measures, and such other conditions as the Committee may reasonably require, to minimize the interference with the quiet use and enjoyment of the surrounding residences during the course of construction.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the restrictions contained in **Article 4** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 8** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

8.6 Architectural Committee's Decision. The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Oakmont Village Board. If disapproved, the applicant is entitled to reconsideration by the Oakmont Village Board at an open meeting of the Oakmont Village Board unless the disapproval decision was made by the Oakmont Village Board instead of the Committee or unless the Architectural Committee has the same members as the Oakmont Village Board. Reconsideration by the Oakmont Village Board does not constitute a dispute resolution procedure described in **Section 6.3.7**.

If the Committee fails to approve or disapprove any application or fails to request additional information within 60 days of receipt of either the complete application or any advance payments required by the Committee, whichever shall occur later, the application shall be deemed approved unless a written extension is executed by the Person submitting the application and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the complete application and/or advance payments and to establish the date of receipt.

8.7 Completion of Work. On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

8.8 Non-liability. The Oakmont Village Association, the Committee, the Declarant, or the other Lot Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Lot Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

8.9 Enforcement. If any Owner or occupant violates the provisions of this **Article 8**, the Declarant or the Oakmont Village Association, in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 8**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

8.10 Oakmont Village Board's Authority. If for any reason the Committee is not established or not active, the Oakmont Village Board shall perform the duties and shall have the rights of the Committee as described in this **Article 8**.

8.11 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations.

Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

8.12 Declarant Exemption. Except for the contractual requirement in that certain agreement titled "Amended Annexation/Capital Contribution Agreement Regarding the Orchard at Oakmont" dated March 18, 2005 that the Developer (who is the Declarant) obtain certain therein specified approvals for its development from the Association Architectural Committee, Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 8** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 8** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Lot Owner or the Oakmont Village Association.

8.13 Rights of Inspection. During reasonable hours, any member of the Architectural Committee or any agent of such committee or any representative of the Association or Declarant shall have the right to enter upon and inspect any portion of a Lot and the exterior of the building and Improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and shall not become liable therefore or be deemed guilty of trespass nor any other tort by reason thereof.

ARTICLE 9 - Insurance

9.1 Individual Property Insurance. Each Lot Owner shall obtain and maintain, at the Owner's expense, a property insurance policy which provides the minimum coverage against losses caused by fire and other hazards normally covered under a "special form" policy or its equivalent in an amount not less than 100% of the replacement cost of the insurable Improvements on the Lot. The policy shall contain the following endorsements or their equivalents: replacement cost, inflation guard, ordinance or law and demolition. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance policies of the types required herein. The Oakmont Village Board from time to time may require each Owner to provide a certificate from the Owner's insurer certifying that the required insurance has been procured and is in full force and effect. With respect to Owners of Maintenance Association Lots, each of them shall be deemed to have satisfied the requirements of this **Section 9.1** if the Maintenance Association maintains a master policy on behalf of all its members for the coverages specified herein.

Each Owner is strongly advised to seek the advise of a qualified insurance consultant regarding: (i) the amount of personal liability insurance coverage the Owner should maintain because of the Owner's ownership interest(s) and (ii) the availability of loss assessment insurance coverage.

9.2 Oakmont Village Association Insurance. The Oakmont Village Association may obtain and maintain the following insurance, in the discretion of the Oakmont Village Board, containing such terms and conditions as the Oakmont Village Board shall determine in its discretion:

- (i) Commercial general liability policy or policies;
- (ii) Property insurance policies;
- (iii) Directors and Officers' liability policy;
- (iv) Workers Compensation Insurance;
- (v) fidelity bonds or insurance covering officers, directors and employees who have access to any Oakmont Village Association funds; and

(vi) such other insurance as the Oakmont Village Board in its discretion considers necessary or advisable.

ARTICLE 10 - Damage or Destruction

10.1 Repair or Reconstruction. If an Improvement on any Lot is damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the Improvement in accordance with the original as-built plans and specifications subject to such modification as may be approved by the Architectural Committee or as required by law.

10.2 Completion of Repair or Reconstruction. The repair or reconstruction of any Improvement shall commence no later than 120 days after the date of such damage or destruction and shall be completed no later than 270 days subject to extensions because of delays that are beyond the control of the Owner. The Owner immediately shall take such steps as may be reasonably required to secure any hazardous condition resulting from the damage or destruction and to screen any unsightly views.

ARTICLE 11 - Rights of Mortgagees

11.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 11** shall have the definitions contained in this **Section 11.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan Oakmont Village Association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Oakmont Village Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Authority and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages or holders of Mortgages encumbering the same Lot or other portions of the Development.

11.2 Encumbrance. Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

11.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Lot free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Lot, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Lot shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Lot and all future assessments levied against the Lot as long as the institutional Mortgagee remains in title, including any special assessments levied by the Oakmont Village Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Lots as provided in **Section 7.9**.

11.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Lot made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Lot is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to affect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchaser shall be obligated to pay only

assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Oakmont Village Association on or after the date the purchaser acquired title to the Lot. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

11.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.

ARTICLE 12 - Amendments

12.1 Amendment Before Close of First Sale. Before the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding the Declaration. The Oakmont Village Board of Directors must also approve such amendment or rescission by the Declarant or such change shall not be effective. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

12.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, any amendment, change, modification, or rescission of all or any of the restrictions, conditions, covenants, reservations, liens or charges set forth in this Declaration (and as the same may be incorporated in any deed, contract of sale or lease) may be made and effected from time to time with the consent of the Oakmont Village Board and (a) the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, (b) if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of all votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. The Oakmont Village Board may withhold consent if the proposed amendment would adversely affect any covenant, restriction, right, duty, benefit or burden set forth in this Declaration that the Board, in its discretion, determines benefits the other members in the Oakmont Village Association.

Nothing contained in the foregoing is intended to vary the applicable requirements of California law set forth in Civil Code sections 1355 and 1356.

Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or rescission of any provision of this Declaration, no such amendment or rescission shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5.

Notwithstanding anything herein to the contrary, if an amendment is adopted by the Members holding 75% or more of the total voting power of the Oakmont Village Association that amends the declarations of restrictions encumbering other properties within Oakmont Village, and the amendment is intended to amend this Declaration in the same manner, this Declaration shall be amended in the same manner even if the amendment is not for any reason duly approved by 51% of the Owners within this Development.

Any amendment duly adopted as authorized within this **Section 12.2**, is effective when the approval has been certified in a writing executed and acknowledged by an officer of the Oakmont Village Association and the amendment and certification have been recorded in Sonoma County, California.

ARTICLE 13 - Declarant Disputes

Any claim, dispute or other controversy between any Owner(s) and/or the Maintenance Association and the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Article 13**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of any Improvements or landscaping located within the Development, including any claims made under Civil Code sections 896 and 897 (individually and collectively the "Claim") shall be subject to the claims procedures set forth in Exhibit A attached hereto and incorporated herein.

ARTICLE 14 - Miscellaneous Provisions

14.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

14.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

14.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

14.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Lot on the basis of race, sex, marital status, national ancestry, color or religion.

14.5 Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the Oakmont Village Board or manager and at the Owner's expense, may cause an audit or inspection to be made of the books and financial records of the Oakmont Village Association.

14.6 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Oakmont Village Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

14.7 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Lot.

14.8 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

14.9 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained

in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Lot in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Oakmont Village Association or any Owner in any legal or equitable action pursuant to the procedures described herein.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Lot into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Oakmont Village Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Oakmont Village Association shall have the primary responsibility for enforcing the restrictions contained in **Article 4** and the architectural provisions contained in **Article 8**. If any Owner or occupant desires the Oakmont Village Association to take any enforcement action, the Owner or occupant shall notify the Oakmont Village Association in writing of the alleged violation. On receipt, the Oakmont Village Board shall review the matter and shall determine what action, if any, to take. Notwithstanding anything herein to the contrary, the Oakmont Village Board shall forward alleged violations, which involve restrictions customarily under the jurisdiction of the Architectural Committee, to the Committee to determine if a violation exists. Neither the Oakmont Village Board nor the Oakmont Village Association or any director, officer or agent thereof shall be liable if the Oakmont Village Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Oakmont Village Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Oakmont Village Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Oakmont Village Association or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Oakmont Village Association or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

14.10 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of Owners holding three-fourths (3/4) of the total voting power of the Oakmont Village Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

14.11 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials on the Property;
- (ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;

- (iii) maintain construction and/or sales offices on the Property and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements on the Property;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Property to inspect any model homes.

14.12 Assignment by Declarant. With the written consent of the Oakmont Village Board, which consent shall not be unreasonably withheld, Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of the rights and duties of the Declarant may execute an instrument assuming the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assign shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assign succeeded to the rights of the Declarant hereunder.

14.13 Attorneys' Fees. Except as provided in **Article 13** and Exhibit A, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the Oakmont Village Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

14.14 Notices. Any notice permitted or required by this Declaration, the Oakmont Village Articles, Oakmont Village Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage prepaid and addressed to the recipient at the address that the recipient has provided the Oakmont Village Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

14.15 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Lot in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Oakmont Village Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Oakmont Village Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Oakmont Village Board or Committee to enforce these restrictions at any future time.

14.16 Conclusiveness of Records. For the purpose of making a title search upon guarantying or insuring title to any Lot, or Lot ownership, or interest therein, or lien, or mortgage or trust deed thereon embraced within the property and for the purpose of protecting prospective purchasers and/or encumbrances in good faith and for value and for no other purpose;

(a) As to any act or non-act of the Association, its departments, committees, or agents (excepting the Architectural Committee) and/or as to performance or non-performance of any act of any Owner of any Lot, or Lot ownership embraced within the Property or of any interest therein or lien or mortgage or trust deed thereon, including but not limited to the payment of any dues, fees, charges or assessments, interest, costs and penalties, a certificate as to any matters contained in the records of the Association certified by the secretary thereof shall be conclusive proof as to all matters shown by such certificate.

(b) As to any act or non-act of Declarant, a certificate as to any matters contained in the records of Declarant certified by Declarant or his duly authorized agent shall be conclusive proof as to all matters shown by such certificate.

(c) As to any act or non-act of the Architectural Committee, a certificate as to the matters contained in the records of the Architectural Committee certified by any two (2) members thereof shall be conclusive proof as to all matters shown by such certificate.

THIS DECLARATION is executed this 6th day of January, 2006

THE WALNUT ORCHARD, LLC
a California limited liability company

By: Bert
Its manager

STATE OF CALIFORNIA)
)ss.
COUNTY OF Sonoma)

On JANUARY 6, 2006 before me, Sandy VEVEIROS, Notary Public, personally appeared BEN VAN ZUTPHEN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

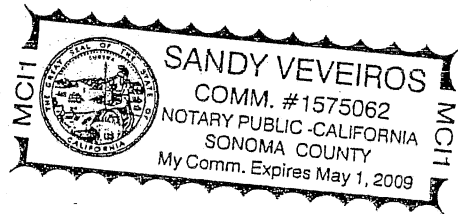
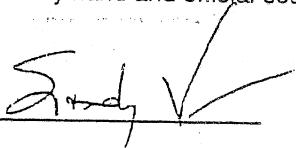


EXHIBIT A - Claims Procedure

THE ORCHARD AT OAKMONT

CLAIMS PROCEDURE

EXHIBIT A

This Exhibit contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as initial purchasers. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

This document describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Unless the context indicates otherwise, the definitions set forth in Article 1 of the Declaration shall apply in this Exhibit.

Any claim, dispute or other controversy between: (i) any Owner(s) and/or the Maintenance Association (the "Claimant") and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code §911 or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Exhibit) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or labor or other services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or operation of any Improvements or landscaping located within the Development, including but not limited to any claims for violation of the functionality standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statute violation (individually and collectively the "Claim"), shall be subject to the claim procedures set forth in **Sections 1 and 2** of this Exhibit.

The procedures in this Exhibit do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures.

Declarant, the Maintenance Association and each Owner covenant not to commence any litigation without complying with the procedures described in **Sections 1 and 2**. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as is expressly authorized by law, nothing herein shall reduce or extend any applicable time frame

within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality standards in Civil Code sections 896 and 897 that describe how the Improvements and landscaping within this Development should function during certain applicable time periods (the "Functionality Standards"). SB 800 impacts the legal rights of the Oakmont Village Maintenance Association and each Owner.

The Maintenance Association and Owner have certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code Section 945.5, including if the Oakmont Village Maintenance Association or Owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules; (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

Civil Code sections 910 through 938 contain prelitigation procedures for resolution of a claim for violation of Functionality Standards. As authorized by Civil Code section 914, Declarant may elect to use these prelitigation procedures or use alternative procedures. Declarant has elected to use the prelitigation procedures set forth in Civil Code sections 910 through 938. Declarant's election is made on behalf of Declarant and any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911.

1. Nonadversarial Prelitigation Procedures: The Claim is subject to the nonadversarial prelitigation procedures set forth in this Section 1.

1.1 Claim Notice. The Claimant shall notify Declarant in writing of the Claim addressed to the agent for service of the Claim Notice described in Section 3. The notice shall: (i) contain the Claimant's name and address and preferred method of contact; (ii) state that the Claimant elects to commence the procedures in this Exhibit to resolve the Claim; (iii) describe the Claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation; and (iv) if applicable, state that the Claimant alleges a violation of the Functionality Standards (the "Claim Notice").

1.2 Claim Procedures. The Claim shall be processed in accordance with the nonadversarial prelitigation procedures set forth in Civil Code sections 910 through 938.

Either party may commence binding judicial reference under the provisions of Code of Civil Procedure section 638, et seq., by a general referee appointed under the provisions of Code of Civil Procedure section 638(a) or any successor statutes thereto (the "Referee") utilizing the reference services provided by the Judicial Arbitration and Mediation Services ("JAMS"). Either or both parties may take the necessary steps to secure the appointment of the Referee.

The Referee shall have the authority to hear and determine any and all issues in the action or proceeding, whether of fact or law, and to report a statement of decision. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

(a) Referee Selection. The Referee is to be a retired judge or attorney with substantial experience in real estate matters. The parties shall mutually select the Referee from the JAMS panel to hear the dispute. In the event the parties cannot mutually select a member from the panel within the (10) days after submission of the dispute to JAMS, then JAMS shall select the Referee. If JAMS has ceased doing business in Sonoma County, the parties shall use a similar local organization which provides persons qualified to act as a Referee under Code of Civil Procedure §638(1).

(b) Provisional Relief. Any party may, without waiving the right to judicial reference, prior to the time a Referee is appointed by the Court, apply directly to the Court for provisional relief, including, but not limited to, the filing of a compliant for the purpose of recording a lis pendens, attachment, receivership, injunction and motions to expunge a lis pendens. At such time as the Court has appointed a Referee, the Court may transfer any such proceeding for provisional relief to the Referee for disposition.

(c) Discovery. Within twenty days after appointment of the Referee, each party shall serve on each other party all documents relevant to the dispute and all documents that the party intends to offer as evidence during the reference proceedings. In addition to written discovery, each party shall be entitled to take one discovery deposition of each other party and to take three non-party depositions. The parties shall provide to the Referee and to all other parties, within forty-five days after appointment of the Referee, a list of expert witnesses who will provide opinion testimony. The parties shall be entitled to depose any designated expert prior to the commencement of the hearing. The Referee shall resolve any discovery dispute between the parties.

(d) Pre-Hearing Conferences. The Referee may, in his or her discretion, require the attendance of the parties at pre-hearing conferences.

(e) Hearing. The parties shall cooperate to assure a prompt and timely commencement of the hearing. The hearing must commence within three months after appointment of the Referee and shall not exceed seven days in length without the approval of all parties. All hearings shall be held in Sonoma County, unless the parties agree to some other location. The hearing shall be conducted in the same manner

as it would be before a court, including, but not limited to, the laws and rules of evidence, unless the parties otherwise agree in writing.

(f) Confidential Record. A stenographic record of the hearing shall be made, but will be confidential except as necessary for post-hearing motions and appeal.

(g) Judgment. The Referee shall render a statement of decision with findings of fact and conclusions of law to the Court in the form of a statement of decision within twenty (20) days after the close of testimony, pursuant to Code of Civil Procedure §643. The Court shall enter judgment based upon the statement of decision. The decision may be appealed.

(h) Fees. The parties are to share costs and the Referee's fees equally. Each party shall be responsible for their own costs and attorneys' fees, subject to Code of Civil Procedure §1021.1.

(i) Construction Defect Lawsuits. The alternative dispute resolution procedure applies to construction defect claims if the statutory prelitigation procedures in Civil Code sections 910 through 938 do not resolve the Claim, or the Declarant elects, in its sole discretion, to opt out of the statutory prelitigation procedures.

3. Agent for Services of Claim Notice Notice of any Claim against Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, including Civil Code section 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 4**, shall be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

Claims Notice Agent - Orchard at Oakmont
520 Mendocino Avenue, Suite 250
Santa Rosa, CA 94501

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice under Civil Code section 912(e) on file with the California Secretary of State's office in Sacramento, California. The current telephone numbers and website for the Secretary of State's office are: (916) 657-5448 or (916) 653-3984 and www.ss.ca.gov. Written request can be mailed to the California Secretary of State, Special Filings, P.O. Box 942877, Sacramento, California, 94277-0001.

If the Claim notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mail. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

4. **Documents and Subsequent Owners** Declarant has provided copies of the following documents to the initial purchasers of homes in this Development:

- (i) inspection and maintenance schedules and guidelines;
- (ii) a limited fit and finish warranty and manufacturers products' limited warranties; and
- (iii) a copy of Title 7 of Part 2 of the Civil Code (SB 800).

The initial purchasers shall retain the foregoing documents (the "Documents") and on transfer of title to the Property to a subsequent owner shall transfer the Documents or provide true and complete copies to the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 3 of this Exhibit.** Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners, must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

5. **Covenants** The covenants, restrictions, rights, duties, benefits and burdens set forth herein benefit and bind each Lot and each Owner and successive Owner thereto as covenants running with the land and equitable servitudes and as authorized under Civil Code sections 945 and 1354.

6. **Amendments** Notwithstanding anything in the Declaration to the contrary: (i) the provisions in this Exhibit may not be modified or waived without the prior written consent of Declarant; and (ii) the provisions in this Exhibit may be modified or waived with respect to any particular Claim with the written consent of Declarant and the Claimant or Claimants that made the Claim. The Board of Directors of the Maintenance Association shall have full power and authority to approve any modifications or waivers with Declarant with respect to any Claim made by the Maintenance Association. In addition, the provisions in this Exhibit may be modified with respect to any lots owned by Declarant by filing an amendment to this Exhibit in the records of the county in which the Development is located. The amendment shall affect only lots owned by Declarant at the time the amendment is recorded and such other lots whose owners consent to the amendment in writing.

7. Claims Filing Period Nothing herein extends any time periods in which a Claim must be filed under Civil Code sections 896 or 897 or otherwise extends any applicable statutes of limitations or statutes of repose, except as expressly authorized by law.