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THE ORCHARD AT OAKMONT MAINTENANCE ASSOCIATION

DECLARATION

OF

RESTRICTIONS (CC&Rs)

(OAKMONT VILLAGE DECLARATION NO. 52)

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 the Claims Procedures in Exhibit B. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.

THE ORCHARD AT OAKMONT MAINTENANCE ASSOCIATION

DECLARATION

OF

RESTRICTIONS (CC&Rs)

(OAKMONT VILLAGE DECLARATON NO. 52)

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THE ORCHARD AT OAKMONT MAINTENANCE ASSOCIATION

DECLARATION OF RESTRICTIONS (CC&Rs)

(OAKMONT VILLAGE DECLARATION NO. 52)

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 in Santa Rosa, California. Fifty-five of these lots will be made subject to the provisions in this Declaration in three phases. The first phase consists of 16 lots described as Lots 1, 2, 3, and 36 through 48 and Parcel A 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 (the "Map"). The remaining 39 lots to be annexed in subsequent phases will be made subject to all the provisions of this Declaration pursuant to the annexation provisions in **Section 12.1** and as described in Exhibit A. The other lots in the development will be made subject to specific provisions of this Declaration as described in Recital D and **Article 13**.
- B. This Development is a senior citizen housing development and is part of the larger senior housing community commonly known as Oakmont Village. The lots subject to this Declaration, together with additional lots owned by Declarant, are subject to the Orchard at Oakmont Declaration of Restrictions (CC&Rs) (Oakmont Village Declaration No. 51) recorded on _____, _____ as Document No. _____ in the records of Sonoma County, California (the "Master Declaration"). The Master Declaration describes the covenants, restrictions, rights, duties, benefits and burdens applicable to the lots in the Development in connection with the overall Oakmont Village community.
- C. The purpose of this Declaration is to establish a mechanism for the maintenance and repair of portions of the residential structures and landscaping situated within the lots in this Development and a shared driveway identified as Parcel A on the Map. A separate association called The Orchard at Oakmont Maintenance Association (the "Maintenance Association"), the members of which are owners of Lots in this Development, has been established to perform the maintenance and repair. This Declaration describes the rights and duties of the Maintenance Association and each Lot Owner regarding the maintenance and repair of the residences, landscaping and other Improvements within this Development.
- D. The City of Santa Rosa has established a Special Tax District entitled "City of Santa Rosa Special Tax District No. 2005-2 (The Orchard at Oakmont, Units 1 and 2)" (the "District") that will maintain certain landscaping on the Lots within the Development that front Pythian Road and Highway 12. The members of the Special Tax District are the owners of the Special Tax District Lots described in **Section 1.23** of this Declaration. If the property owners within the District vote to terminate the District, the Maintenance Association shall be obligated to assume the maintenance and all 165 residential lots shall be obligated to pay the maintenance costs as more particularly described in **Article 13**.

- E. Declarant desires to impose certain restrictions on the lots in this Development that will benefit and bind each lot, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the lots and/or in favor of the Maintenance Association, to establish a planned development within the meaning of Civil Code section 1351(k) and to provide for the assumption of the Special Tax District maintenance duties if the District is voted out of existence.
- F. The covenants, restrictions, rights, duties, benefits and burdens in this Declaration will benefit and bind the lots described in **Section 1.9** on the recordation of this Declaration and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the Development. The Special Tax District Lots described in **Section 1.23** of this Declaration are subject to the provisions of **Article 13** on the recordation of this Declaration.

DECLARANT DECLARES AS FOLLOWS:

ARTICLE 1 - Definitions

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

- 1.1 Articles. The Articles of Incorporation of the Maintenance Association and any amendments thereto.
- 1.2 Board. The Board of Directors of the Maintenance Association.
- 1.3 Bylaws. The Bylaws of the Maintenance Association and any amendments thereto.
- 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, Parcel A, and all Improvements thereon.
- 1.7 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedure attached as Exhibit B is not a part of the Governing Documents.
- 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, 2, 3 and 36 through 48 shown on the Map and all Improvements thereon and any additional residential lots that may be subsequently annexed into the Development as described in **Article 12** and any Improvements thereon.
- 1.10 Maintenance Association. The Orchard at Oakmont Maintenance Association, a California nonprofit mutual benefit corporation.
- 1.11 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, including any

subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments and/or records of survey.

1.12 Master Declaration. The Orchard at Oakmont Declaration of Restrictions (CC&Rs) (Oakmont Village Declaration No. 51) recorded on _____, _____ as Document No. _____ in the records of Sonoma County, California.

1.13 Member. A member of the Maintenance Association.

1.14 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.

1.15 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.

1.16 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.

1.17 Parcel A. Parcel A shown on the Map that contains a shared driveway providing access to Lots 1, 2, 3, 47 and 48. Parcel A is owned by the Owners of the Shared Driveway Lots as described in **Section 2.6**.

1.18 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.19 Property. The land and Improvements shown on the Map.

1.20 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of **Section 4.6.2**.

1.21 Shared Driveway Lots. Lots 1, 2, 3, 47 and 48 that share the driveway with Parcel A.

1.22 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)" described in **Article 13**. The properties situated within the Special Tax District are the Special Tax District Lots identified in **Section 1.23** and include the 165 Lots that will be developed by Declarant.

1.23 Special Tax District Lots. Lots 1 through 80 shown on the Map described in **Section 1.11** and Lots 1 through 85 shown on the subdivision map entitled "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 (the "Unit 2 Map").

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). Phase 1 consists of 16 Residential Lots and Parcel A. If all the subsequent phases are annexed into the Development as described in **Article 12**, the Development will consist of 55 Residential Lots. Declarant has no obligation to annex any subsequent phase into the Development.

In addition for purposes of **Article 13**, the Development consists of the Special Tax District Lots described in **Section 1.23**. **Article 13** will bind the Special Tax District Lots on the recordation of this Declaration.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Residential Lot and is a Member of the Maintenance 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 Maintenance 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 as required under the Master Declaration.

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 as required under the Master Declaration 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, windows, 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 Conveyance of Parcel A and Parcel A Easements. Parcel A shall be conveyed to the Owners of the Shared Driveway Lots in undivided equal interests as tenants in common. Parcel A is subject to a private access and utility easement in favor of the Shared Driveway Lots and public storm drain easement, public water easement, public pedestrian easement, and private access easement in favor of the Association and an emergency vehicle access easement as shown on the Map. Parcel A shall be maintained and repaired by the Maintenance Association as described in **Section 3.5.7** and the maintenance and repair costs incurred by the Maintenance Association shall be allocated to the Shared Driveway Lots as described in **Section 5.9.1**.

2.7 Monument Easements (Lots 35 and 36). Lots 35 and 36 as the servient tenements are subject to the easements in favor of the other Lots as the dominant tenements for access and use of the portion of each Lot subject to the monument easement in order to retain, inspect, maintain, repair and replace the monuments and related Improvements. The location of the monument easements will be set forth in the initial grant deeds to Lots 35 and 36 or in other appropriately recorded documents.

2.8 Maintenance and Repair Easement. Each Lot and Parcel A as the servient tenements are subject to an easement in favor of each other Lot as the dominant tenement for purposes of providing the agents of the Maintenance Association such access as may be necessary to perform the Maintenance Association's maintenance and repair duties as described in **Section 3.5**.

2.9 Other Easements. Each Lot and the Parcel A are 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 Parcel A, or any other appropriate public record.

2.10 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.

2.11 Master Declaration. The Lots in the Development also are subject to the covenants, restrictions, benefits, burdens, rights and duties set forth in the Master Declaration. Each Lot Owner also shall be a Member of the Oakmont Village Association, a California non-profit, mutual benefit corporation (the "Master Association"). Each Lot shall be obligated to pay assessments to the Master Association in addition to paying assessments to the Maintenance Association.

2.12 Phasing. The property that may be annexed into the Development as a part of a subsequent phase is described in Exhibit A attached hereto. Declarant reserves the right to determine the number of phases, the number of lots in a phase, and the building types in a phase. Declarant makes no representation or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. The restrictions, rights and duties described herein shall benefit and bind Phase 1 on recordation of this Declaration and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the Development as described in **Article 12**.

ARTICLE 3 - Maintenance and Repair Obligations

3.1 Owner's Maintenance Obligations. Except for that portion of any Lot maintained by the Maintenance Association as described in **Section 3.5** or the Special Tax District as described in **Article 13**, 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 (except replacement of roofing materials). Shared Improvements with adjoining Lot Owners, including fences on a common boundary between adjoining Residential Lots, shall be maintained as described in **Section 3.2**. All other fences on the Residential Lot, including fences located on a common boundary between the Owner's Lot and the Parcel A, shall be maintained by the Owner. 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. Each Owner shall be responsible for the periodic cleaning of the windows on the Owner's residence.

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 3.6** and (ii) commonly-accepted homeowners' maintenance obligations.

If any portion of any Improvement on a Lot that is maintained by the Owner is damaged or destroyed as a result of a covered loss under the property insurance maintained by the Maintenance Association as described in **Section 6.2**, the Maintenance Association, on request from the Owner, immediately shall take the appropriate steps to process the necessary claim. On receipt of any insurance proceeds allocated to the Improvements maintained by the Owner, the Maintenance Association shall distribute the proceeds to the Owner subject to the rights of the Owner's Mortgagee and subject to such reasonable terms and conditions as may be imposed by the Maintenance Association to assure that the proceeds are used to make the necessary repair or restoration. For example, the Maintenance Association may distribute the proceeds to an insurance trustee or financial institution for distribution in accordance with normal and customary construction loan practices.

3.2 Shared Improvements. As part of the original construction of the Development, Declarant constructed roofs, siding and foundations on or about the common boundary line between two adjoining Lots that are used by or are a part of the structural Improvements on the adjoining Lots, which Improvements are to be shared by the adjoining Lot Owners. The residences share a common foundation footing along the common boundary line. The roofs and siding may be joined, and there may be no discernible demarcation between the roof and siding of one residence and the roof and siding on the adjoining residences. The residences do not share a common wall; each residence has its own wall structure separated by an airspace from the abutting wall structure of the adjoining residences.

3.2.1 Definition of Shared Improvements. For purposes herein, the Shared Improvements may consist of the following:

- (a) any integral portion of any stucco or siding material that crosses the common boundary line and serves as siding material on the adjoining residences including rock, brick or other exterior treatment;
- (b) the portion of the foundation that provides foundation support to two adjoining residential structures;
- (c) the fence situated along the common boundary line; and
- (d) any other material located on or about the common boundary line that benefits both of the adjoining residences.

The foregoing items are individually and collectively referred to as the "Shared Improvements"; and, except as described in subparagraph (a) through (d), no other property shall be considered a "Shared Improvement".

3.2.2 Maintenance of Shared Improvements. Except to the extent the Shared Improvement is maintained by the Maintenance Association as described in **Section 3.5**, the adjoining Lot Owners shall maintain the Shared Improvements in good condition and repair at all times.

3.2.3 Notice and Cooperation. If an Owner determines that maintenance, repairs or repainting are needed (the "proposed work"), the Owner shall notify the other Owner and the Owners shall meet within ten days of the request of any Owner to discuss in good faith the need for the proposed work, the party to perform the proposed work, the payment for the proposed work, and any related issues. If any Shared Improvement is damaged or destroyed and the loss is covered by insurance, the Owner immediately shall take the necessary steps to process the appropriate insurance claims. Any portion of any insurance proceeds received by the Owner attributed to any Shared Improvement shall be used only for the purpose of repairing or restoring the Shared Improvements except as may be otherwise required by the Owner's first Mortgagee described in **Section 8.1** or by the provisions of **Article 6**. If the loss is an uninsured loss, each Owner shall contribute his or her allocable share to repair or restore the Shared Improvement except as is otherwise authorized by **Article 6**.

3.2.4 Allocation of Costs. The cost of the maintenance and repair of the Shared Improvements that are to be jointly maintained and repaired shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. For example,

if the need for maintenance or repair is caused by the wilful or negligent act or omission of any Owner or occupant or their guests, agents or pets, the responsible Lot Owner shall pay the maintenance or repair costs. Declarant grants to the Owner of each Lot subject to this **Section 3.2** as a dominant tenement 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 Shared Improvement as provided in **Section 2.3**.

Each Owner of a Lot subject to this **Section 3.2** shall comply with the property insurance requirements described in **Section 6.7**.

3.2.5 Dispute Resolution. Any dispute between or among 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), or 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 Sonoma County, California. 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.

3.3 Owner's Landscaping Obligations. Except for such landscaping as may be maintained by the Maintenance Association or 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 approved 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.

3.4 Owner's Failure to Maintain Improvements. If any Owner fails to maintain his or her Lot as required in **Sections 3.1, 3.2 and 3.3**, the Maintenance Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Maintenance Association may levy a reimbursement assessment against the Lot in the manner described in **Section 5.5**.

3.5 Maintenance Association's Maintenance Responsibilities. The Maintenance Association shall maintain the Improvements and landscaping described in this **Section 3.5**.

3.5.1 Roof. Maintain, repair and replace the roofing materials, rain gutters and downspouts on each residence. Maintenance of the roof includes the roofing material such as shingles, underlayment and flashing, but not the plywood sheeting or trusses. Maintenance of the rain gutters and downspouts also includes an annual cleaning and removal of all debris therefrom.

3.5.2 Exterior Repainting. Periodically repaint and recaulk the exterior of each residence, including the siding, trim, window frames, rain gutters and downspouts, exterior door surfaces and such portions of fences requiring painting.

3.5.3 Landscaping. Maintain the irrigation and landscaping system in the unfenced portion of the front, side and rear yard of each Lot with the exception of the area of the 30-foot public landscape easement along the rear yard on certain Lots and fronting Highway 12 and Pythian Road. Maintenance of irrigation and landscaping within the 30-foot landscape easement shall be performed by the Special Tax District.

3.5.4 Driveway and Walkways. The driveway and walkways situated within the unfenced area of each Lot.

3.5.5 Lot 35 and 36 Monuments. The monuments situated within the monument easements on Lots 35 and 36 as described in **Section 2.7**.

3.5.6 Sidewalks. The sidewalks along the western side of Pythian Road if the sidewalk is not maintained either by the City of Santa Rosa or the Special Tax District.

3.5.7 Parcel A. Maintain, repair and/or replace the roadbed, subbase, pavement and other Improvements within Parcel A, provided that any utilities within Parcel A that exclusively serve a Shared Driveway Lot shall be maintained by the Owner of the Shared Driveway Lot. No Shared Driveway Lot Owner or occupant may excavate or otherwise disturb the Improvements within Parcel A without the prior written consent of the Maintenance Association or the Maintenance Association's manager. In granting consent, the Maintenance Association may impose such terms and conditions as the Board, in its discretion, deems appropriate to protect the interests of the other Shared Driveway Lot Owners and occupants. The City of Santa Rosa has the right, but not the duty, to maintain Parcel A. The City may exercise this right in any manner permitted by law. The City is not bound by any alternative dispute resolution process set forth in this Declaration. This paragraph shall not be revised or deleted without the prior written consent of the City of Santa Rosa.

The Maintenance Association's maintenance, repair and replacement duties as set forth in this **Section 3.5** shall be in compliance with the guidelines described in **Section 3.6** and the standards described in **Section 3.7** and the Architectural Committee guidelines and standards, as duly amended from time to time.

3.6 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Maintenance Association 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 and the Maintenance Association 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.

The Board periodically and at least once every three years shall review and update the Guidelines for Improvements and any landscaping maintained by the Maintenance Association, which may be done in conjunction with the preparation of the reserves study described in **Section 5.3**.

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 B attached to this Declaration. Declarant may charge a reasonable fee for providing replacement copies.

In addition to the Guidelines provided by Declarant as described above in this **Section 3.6**, Declarant shall provide the Maintenance Association and (as needed) to the Special Tax District all available as-built drawings and landscaping and irrigation, drainage and grading plans for Improvements and landscaping installed within the Development by or on behalf of the Declarant.

3.7 Maintenance Standards. The Maintenance Association shall maintain, repair and replace the roofing materials, rain gutters and downspouts and exterior paint as required in **Sections 3.5.1** and **3.5.2** in good condition and repair. Roof material replacement and periodic repainting shall be performed in accordance with a reasonably prudent replacement and repainting schedule that enables each roof to properly retain its function as a roof and retain an acceptable appearance. Broken or missing roofing materials, rain gutters or downspouts and chipped or worn paint shall be repaired, replaced or repainted as soon as is reasonably practical. The Maintenance Association shall maintain the Improvements within Parcel A in good condition and repair at all times.

All landscaping shall be maintained in a healthy and weed-free condition. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times.

3.8 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 Board approves some other arrangement in writing. All trash or refuse shall be

kept only in sanitary containers, which containers shall be kept in the areas not visible from any other Lot or public street except on trash collection day if curbside service is provided.

3.9 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Maintenance Association in the performance of the Maintenance Association's maintenance and repair obligations described in **Section 3.5** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Maintenance Association is responsible and access to the Owner's or occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

3.10 Reimbursement and Indemnification. If the Maintenance Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Maintenance Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in **Section 5.5**. The Owner immediately shall pay the charge or reimbursement assessment to the Maintenance Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in **Section 4.6.4**. The Maintenance Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Maintenance Association. Any deductible amount shall be paid by the Owner.

Furthermore, the Owner shall defend, indemnify and hold the Maintenance Association harmless from any claim, demand, liability or cost, including attorneys' fees arising from such damage, except to the extent the demand, claim, cost or liability is covered by insurance maintained by the Maintenance Association. The Owner shall pay the amount of any deductible.

ARTICLE 4 - The Maintenance Association

4.1 Formation of the Maintenance Association. The Maintenance Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Maintenance Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Maintenance Association's operations, Declarant shall perform the duties and shall have the rights of the Maintenance Association as described herein.

4.2 Governing Body. The governing body of the Maintenance Association shall be the Board. It shall be the responsibility of the Board to ensure that the Maintenance Association exercises its rights and performs its duties as described within the Declaration, the Articles, the Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 1357.100 through 1357.150 regarding the elections to the Board and related matters that satisfy the requirements set forth in Civil Code section 1363.03.

4.3 Membership. Each Owner shall automatically be a Member of the Maintenance 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 Maintenance 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.

4.4 Membership Classes and Voting Rights. The Maintenance Association shall have the following two classes of voting memberships:

4.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, only one vote may be cast with respect to that Lot.

4.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Lot owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

- (a) the second anniversary of the first conveyance of a Lot in the most recent phase of the Development; or
- (b) the fourth anniversary of the first conveyance of a Lot in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Lot as described in **Section 5.7**.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

- (1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Maintenance Association that requires approval by the Members shall require approval by the members of each class.
- (2) Single Membership Class/Declarant-Owned Lots. If one class of voting membership exists and Declarant owns any Lots, any action by the Maintenance Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.
- (3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.
- (4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in **Sections 4.11 and 4.14** of this Declaration.
- (5) Amendments. Member approval requirements for any amendments to the Declaration, Bylaws or Articles shall comply with the amendment requirements set forth in the applicable document.
- (6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

4.5 Joint Ownership Votes. The vote that is attributed to each Lot may not be cast on a fractional basis. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot. If more than one Owner casts a vote attributed to a Lot on any matter on which only one vote could be cast for that Lot, the votes cast by such Owners shall be counted as one vote if the votes are the same; if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

4.6 Powers of the Maintenance Association. The Maintenance 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 Articles, Bylaws and this Declaration. The Maintenance Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Maintenance Association under this Declaration, the Articles and the 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 Maintenance Association, including, without limitation, each of the following:

4.6.1 Levying Assessments: The 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 5** of this Declaration.

4.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to conduct of the business and affairs of the Maintenance Association in connection with the maintenance and repair duties of the Maintenance Association, the use of any commonly-metered utilities that are paid by the Maintenance Association 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 Articles or the Bylaws is inconsistent with or materially alters any Rules, the Declaration, the Articles and the 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 Maintenance Association.

Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The 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.

4.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Maintenance Association and, subject to the provisions of **Section 4.12(ix)**, may mortgage, encumber or pledge Maintenance Association assets (including, but not limited to, assessments) as security for such borrowing.

4.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the 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 Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Maintenance Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 11.9**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Maintenance 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 Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Maintenance Association is a party, under such terms and conditions as it considers appropriate.

(i) If the 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 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 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 Board meets to consider or impose discipline upon a Member, the 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 Board at the meeting.

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

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the 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 Maintenance 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, Articles, 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 Maintenance Association.

(e) Assessment Charges: The provisions of this **Section 4.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Maintenance Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

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

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

4.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Maintenance 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.

4.7 Duties of the Maintenance Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Maintenance Association shall have the duty to manage Parcel A, perform the maintenance as described in **Section 3.5**, prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 3.6**, prepare and distribute financial statements, reports and the other documents and notices described in **Section 4.10**, enforce bonded obligations as described in **Section 4.11**, levy and collect assessments as described in **Article 5**, prepare when required the reserve studies described in **Section 5.3**, annually review and implement adjustments as required, and procure, maintain and review the insurance as described in **Article 6**, and, if applicable, assume the maintenance duties of the Special Tax District as described in **Article 13**. The Maintenance 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 Articles, Bylaws, Rules or Board resolutions.

Notwithstanding anything herein to the contrary, the Maintenance Association shall not assume any duty to maintain or insure any residential structures on any Lot until the structure has been completed and a certificate of occupancy permit has been issued by the local governmental entity.

4.8 Taxes and Assessments. The Maintenance Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Maintenance Association, Parcel A or the personal property owned by the Maintenance Association. Such taxes and assessments may be contested or compromised by the Maintenance Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any Property to satisfy the payment of such taxes.

4.9 Utility Service to the Maintenance Areas. The Maintenance Association shall acquire, provide and pay for water and electrical services to operate the system that irrigates the landscaping maintained by the Maintenance Association as described in **Section 3.5.3**.

4.10 Reporting and Notice Requirements. The Maintenance Association shall prepare and distribute the documents described in this **Section 4.10.**

4.10.1 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 Maintenance Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 5.3**, 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 Maintenance 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 Maintenance 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 4.10.1(2)(B)(ii)**. In lieu of complying with the foregoing requirements, if the Maintenance Association is obligated to issue a review of its financial statement pursuant to **Section 4.10.2** below, the Maintenance Association may include in the review a statement containing all of the information required by this **Section 4.10.1(2)(B)(iii)**; and
 - (C) the percentage that the amount in **Section 4.10.1(2)(B)(ii)** is to the amount in **Section 4.10.1(2)(B)(i)**;
- (3) A statement as to both of the following:
 - (A) whether the 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 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 Civil Code 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 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 Maintenance 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 Maintenance Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Maintenance Association shall provide the copy to the Member by first-class mail at the expense of the Maintenance Association, which copy shall be mailed within five days of the receipt of the request.

4.10.2 Financial Statement Review. A review of the financial statement of the Maintenance 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 Maintenance 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.

4.10.3 Policies and Practices Statement. A statement of the Maintenance 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.

4.10.4 Governing Documents. Copies of this Declaration, the Articles, 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 4.10.4** 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 Maintenance Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Maintenance Association's reasonable costs in preparing and reproducing the material.

4.10.5 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the 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 4.10.1** is distributed to the Members.

4.10.6 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 4.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the Maintenance Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

Failure by any member of the Maintenance 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 Maintenance Association or another member of the Maintenance Association regarding enforcement of the governing documents.

4.10.7 Insurance Summary. A summary of the Maintenance 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 Maintenance 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 Maintenance 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 Maintenance Association receives any notice of non-renewal of a Policy, the Maintenance 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 4.10.7** is specified in the insurance policy declaration page, the Maintenance 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 4.10.7** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Maintenance 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 Maintenance Association member, upon request and reasonable notice, may review the Maintenance Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Maintenance Association maintains the policies of insurance specified in this summary, the Maintenance 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. Maintenance Association members should consult with their individual insurance broker or agent for appropriate additional coverage.

4.10.8 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 Maintenance Association's fiscal year. The notice shall be printed in at least 12-point type.

4.10.9 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Maintenance Association of a secondary address. If a secondary address is provided, the Maintenance 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.

4.10.10 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Maintenance Association of a secondary address. If a secondary address is provided, the Maintenance 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.

4.11 Enforcement of Bonded Obligations. If the Maintenance Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Improvements maintained by the Maintenance Association not completed at the time the California Department of Real Estate issued a final subdivision report, the Board will consider and vote on the question of action by the Maintenance Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Maintenance Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board

decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Maintenance Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Maintenance Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Maintenance Association.

Upon satisfaction of the Declarant's obligation to complete the Improvements to be maintained by the Maintenance Association, the Board shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Improvements as described in the "planned construction statement". Any dispute between the Declarant and the Maintenance Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 10**.

4.12 Limitations on Authority of the Board. The Maintenance 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 Maintenance Association shall not deny an Owner or occupant physical access to his or her Lot, either by restricting access to the Owner's Lot;

(ii) the Maintenance Association may not voluntarily assign or pledge the Maintenance 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 Maintenance Association; however, the foregoing provision may not restrict the right or ability of the Maintenance Association to assign any unpaid obligations of a 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.

Furthermore, the Board shall not take any of the following actions except with the consent, by vote at a meeting of the Maintenance Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Maintenance Association residing in Members other than the Declarant:

(v) incur aggregate expenditures for capital Improvements to areas maintained by the Maintenance Association in any fiscal year in excess of 5% of the budgeted gross expenses of the Maintenance Association for that fiscal year;

(vi) sell during any fiscal year property of the Maintenance Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Maintenance Association for that fiscal year;

(vii) pay compensation to members of the Board or to officers of the Maintenance Association for services performed in the conduct of the Maintenance Association's business, provided that

the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Maintenance Association;

(viii) enter into a contract with a third Person to furnish goods or services for areas maintained by the Maintenance Association or for the Maintenance Association for a term longer than one year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) a contract for a term not to exceed three years that is terminable by the Maintenance Association after no longer than one year without cause, penalty or other obligation upon 90 days written notice of termination to the other party; or

(ix) borrow money secured by any Maintenance Association assets as authorized under **Section 4.6.3.**

4.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the separate interests that the Maintenance Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the separate interests that the Maintenance Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Maintenance Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Maintenance Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

4.14 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Maintenance Association in connection with Improvements or landscaping maintained by the Maintenance Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 4.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Maintenance Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 4.14**, if the Class B membership has been converted to Class A membership as described in **Section**

4.4, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 10**. If requested by the Non-Declarant Directors, the Maintenance Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Maintenance Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Maintenance Association, subject to the applicable requirements and procedures set forth in **Sections 4.13, 5.6 and Article 10**. The provisions of this **Section 4.14** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

4.15 Access to Association Records. The Maintenance 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 5 - Assessments

5.1 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 Maintenance 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, Parcel A or any services rendered by the Maintenance 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 Maintenance 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.

5.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Maintenance Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 5.6**, the 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 5.3**.

If the 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 Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

Declarant's obligation to pay regular assessments for Lots owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Maintenance Association and approval by the California Department of Real Estate.

5.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the 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 4.10.1** that the Maintenance Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the 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 Maintenance 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 Board or one officer who is not a member of the Board and a member of the 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 Maintenance Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Maintenance Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the 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 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 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 5.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Maintenance 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 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 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 Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components which the Maintenance 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 Maintenance Association, which excludes the Maintenance Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the 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 Maintenance 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.

5.4 Special Assessments. Subject to the restrictions described in **Section 5.6**, the Board may levy a special assessment if the Board in its discretion determines that the Maintenance Association's available funds are or will become inadequate to meet the estimated expenses of the Maintenance 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 Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

5.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Lot Owners to reimburse the Maintenance Association for any costs incurred or to be incurred by the Maintenance 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. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Maintenance Association. Payment of the deductible amount shall be the responsibility of the Owner. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Maintenance Association and the amount paid exceeds the costs incurred, the Maintenance Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Maintenance Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Maintenance Association may enforce the delinquent assessment as described in **Section 5.10**.

In addition to reimbursing the Maintenance Association for costs necessary to repair Parcel A or other Property that is maintained by the Maintenance Association, the Maintenance Association may seek reimbursement for any costs incurred by the Maintenance Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Lot until notice and hearing have been provided the Owner as described in **Section 4.6.4**; and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Maintenance 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 Maintenance Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

5.6 Assessment Increase Restrictions. The Maintenance 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 Board may not: (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Maintenance Association's preceding fiscal year, or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Maintenance Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Maintenance Association at which a quorum is present. For purposes of this **Section 5.6**, 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 Maintenance 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 Maintenance Association is responsible to maintain that could not have been reasonably foreseen by the 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 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 Board fails to distribute the Pro Forma Operating Budget as required by **Section 4.10.1** for any fiscal year, the Maintenance Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the 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 Maintenance Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

5.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots in a phase on the first day of the month coinciding with or immediately following the date of the first to occur of the following: (i) the first transfer of title of a Lot in a phase by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate; (ii) the date a residence on a Lot is occupied for residential purposes under a lease or rental agreement; or (iii) the date selected by Declarant at the discretion of the Declarant. No Lot shall be subject to any special assessments until regular assessments have commenced against that Lot.

5.8 Due Dates of Assessments. Unless otherwise directed by the 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 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 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 11.14**.

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 Board from time to time, not to exceed the maximum amount permitted by law.

5.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated among the Residential Lots as described in this **Section 5.9**. 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 Maintenance Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

5.9.1 Parcel A Costs. All costs to inspect, maintain, repair and/or replace (including reserves) the Parcel A Improvements, together with an appropriate allocable share of insurance, management and administration costs related to the foregoing shall be allocated equally among the Shared Driveway Lots.

5.9.2 Remaining Costs. All remaining costs shall be allocated equally among the Lots, provided that the costs to procure the property insurance required under **Section 6.2** and any special assessments levied under **Article 7** shall be allocated among the Lots based on the allocations determined by the insurer in certificates of insurance or, if not available, proportionately in accordance with the square

footage of the interior space within each residence as determined by the Board in its sole discretion. The Board may elect a procedure under which insurance costs are paid separately by the Lot Owners.

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

5.10.1 Personal Obligation. The Maintenance 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 5.10.2**.

5.10.2 Assessment Lien. Except as otherwise provided in **Section 5.5** and subject to the provisions of **Section 5.10.3**, the Maintenance 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 Maintenance 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 Maintenance Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Maintenance 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 Maintenance Association.

(4) The right to request a meeting with the Board as provided by **Section 5.10.2(b)(3)**.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Maintenance Association pursuant to the Maintenance 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 Maintenance Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Maintenance 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 Maintenance Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Maintenance Association shall provide a mailing address for overnight payment of assessments.

(1) Prior to recording a lien for delinquent assessments, the Maintenance Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant

to the Maintenance 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 Maintenance Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Maintenance 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 Maintenance Association intends to initiate a judicial foreclosure.

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

(3) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Maintenance Association shall provide the Owners the standards for payment plans if any exist. The 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 Board meeting within that period, in which case the 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 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 Maintenance 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 5.8**, shall be a lien on the Owner's Lot from and after the time the Maintenance 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 5.10.2(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 5.10.2(e)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Maintenance Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Maintenance Association or by the Person designated by the Maintenance 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 Maintenance 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 Maintenance 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 Maintenance Association: (i) as a means of reimbursing the Maintenance Association for costs incurred by the Maintenance Association in the repair of damage to Common Area 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 5.10.2(c)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 8**.

(e) Subject to the limitations of this **Section 5.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 5.10.2(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 Maintenance 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 Maintenance Association shall send additional copies of any notices required by this section to the secondary address provided. The Maintenance Association shall notify Owners of their right to submit secondary addresses to the Maintenance Association, at the time the Maintenance 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 Maintenance Association in a manner that shall indicate the Maintenance 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 Maintenance Association shall only be required to send notices to the indicated secondary address from the point the Maintenance Association receives the request.

(i) This **Section 5.10.2** is subordinate to and shall be interpreted in conformity with **Section 5.10.3**.

(j) If the Maintenance Association fails to comply with the procedures set forth in this **Section 5.10.2**, prior to recording a lien, the Maintenance Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Maintenance Association and not by the Lot Owner.

5.10.3 Assessment Enforcement Restrictions.

(a) If the Maintenance 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 Maintenance Association chooses to proceed by an action in small claims court, and prevails, the Maintenance 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 5.10.3(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 Maintenance 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 Maintenance Association chooses to record a lien under these provisions, prior to recording the lien, the Maintenance 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 Maintenance 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 Maintenance Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Lot, the Maintenance Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Maintenance 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 Maintenance 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 Board and may not be delegated to an agent of the Maintenance Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The 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 Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The 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 Board votes to foreclose upon the Lot. The 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 Maintenance Association. In the absence of written notification by the Owner to the Maintenance Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Maintenance 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.

5.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Maintenance 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 Maintenance Association has recorded a lien for a delinquent assessment in error, the Maintenance 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 5.10 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 5.10 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 Board should confirm the current statutory requirements.

5.11 Restrictions on 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 Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Maintenance Association imposed by law.

ARTICLE 6 - Insurance

6.1 Liability Insurance. The Maintenance Association shall obtain and maintain the following liability policies:

6.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Maintenance Association, any manager, Declarant, the Maintenance Association's directors and officers, and the Owners and occupants of the Residential Lots and their respective family members against any liability incident to any bodily injury or property damage from any accident or occurrence within Parcel A, within any Lot or any other area related to any maintenance or repair work required to be performed by the Maintenance Association pursuant to this Declaration. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use and shall require at least 30 days' written notice to the Maintenance Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

6.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions that are normally and customarily carried for directors and officers of a residential Maintenance Association.

6.2 Association Property Insurance. The Maintenance Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

6.2.1 Property Covered. The policy shall cover the following real and personal property:

(a) *Residential Structures.* All residential structures, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building; windows; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Maintenance Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage;

(b) *Residential Interiors.* The standard fixtures originally installed by the Declarant and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements thereto; but excluding any personal property located in the residential structure; and excluding any Improvements or upgrades to any of the foregoing to the extent the replacement cost of any such Improvement or upgrade made after completion of the original construction of the residence exceeds the

replacement cost of the original Improvements as determined on the date that immediately precedes the date of the damage or destruction of the Improvement or upgrade; and

(c) Landscaping. Lawn, trees, shrubs and plants located in the areas maintained by the Maintenance Association.

6.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

6.2.3 Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in **Section 6.2.1** above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

6.2.4 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

6.2.5 Endorsements. The policy shall contain endorsements as the Board in its discretion shall elect after consultation with a qualified insurance consultant.

6.2.6 Waiver of Subrogation. The policy shall waive all subrogation rights against any Owner or occupant and their family members.

6.2.7 Deductible. The amount of any deductible shall be paid by the Maintenance Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board.

6.3 Insurance Rating, Cancellation and Certification. The insurance required to be carried by the Maintenance Association under **Sections 6.1** and **6.2** shall be issued by insurance companies licensed in the State of California and rated as "A-" or better and ranked as financial size at "Class XII" or higher by A.M. Best. If an A.M. Best rating is not available, the insurance company shall have a substantially equivalent rating by an insurance company rating entity with substantially similar experience and reputation as A.M. Best. All of the policies of insurance maintained by the Maintenance Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

6.4 Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this **Article 6** in any manner that the Board, in its discretion, considers to be in the best interests of the Maintenance Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 6**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Maintenance Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Maintenance Association or the Insurance Trustee, described in **Section 6.6**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Maintenance Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

6.5 Periodic Insurance Review. The Board periodically (and not less than once every three years) shall review the Maintenance Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Maintenance Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of

all covered property under the Maintenance Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

6.6 Insurance Trustee. All property insurance proceeds payable to the Maintenance Association under any property insurance policy procured by the Maintenance Association as described in **Section 6.2** may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Maintenance Association will have the duty to contract for such work as provided for in this Declaration.

6.7 Owners' Property Insurance. Each Owner shall maintain property insurance against losses to personal property located within the Owner's residence and to any upgrades or additions to any fixtures or Improvements located within the Owner's Lot and liability insurance against any liability resulting from any injury or damage occurring within the Lot. **The Maintenance Association's insurance policies will not provide coverage against any of the foregoing.** Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners, the Maintenance Association, and any first Mortgagee of the Owner's Lot.

No Owner shall separately insure any property covered by the Maintenance Association's property insurance policy as described in **Section 6.2** above. If any owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Maintenance Association, the Owner will be liable to the Maintenance Association to the extent of the diminution. The Maintenance Association may levy a reimbursement assessment against the Owner's Lot to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of property insurance the Owner should maintain for the Owner's personal property and upgrades/additions to the Owner's residence; (ii) the amount of personal liability insurance coverage the Owner should maintain; and (iii) the availability of loss assessment insurance coverage.

6.8 Other Insurance. In addition to the policies described in **Sections 6.1** and **6.2**, the Maintenance Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law;
- (ii) fidelity bonds or insurance covering officers, directors and employees who have access to any Maintenance Association funds; and
- (iii) such other insurance as the Board in its discretion considers necessary or advisable.

ARTICLE 7 - Damage, Destruction or Condemnation

7.1 Restoration Defined. As used in this **Article 7**, the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

7.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Maintenance Association and the insurance proceeds are sufficient to cover the loss, then the Maintenance Association, to the extent permitted under existing laws and except as otherwise authorized under this **Article 7**, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Maintenance Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Maintenance Association or an insurance trustee selected under the provisions of

Section 6.6. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Maintenance Association.

7.3 Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

If the total funds available to the Maintenance Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 7.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 7.5** below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to **Section 7.6** below.

7.4 Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 7.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 7.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Maintenance Association shall consider a plan of alternative reconstruction in accordance with **Section 7.5**.

7.5 Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 7.3** and **Section 7.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose residences were materially damaged as determined by the Maintenance Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 7.6** shall apply.

7.6 No Reconstruction. If the damaged Improvement is not to be reconstructed as provided in **Sections 7.2** through **7.5** above, all available insurance proceeds and reserves allocated to the damaged Improvement shall be distributed to the Owners of the damaged Improvements subject to the rights of their Mortgagees, provided that the Board in its discretion may require that all or a portion of the funds be used to secure the damaged Improvement for safety reasons and/or screen the damaged Improvement for aesthetic purposes.

If the damaged Improvement is uninhabitable, from and after the date that the Board determines that the damaged Improvement shall not be restored, the Maintenance Association's duty to maintain and insure the damaged Improvement shall terminate; and the Owner's duty to pay that portion of the monthly assessment allocated to the maintenance (including reserves) and insurance for the residences within the Development also shall terminate. If the damaged Improvement is subsequently restored or replaced so that a habitable residence is again located on the Lot, the Maintenance Association maintenance insurance duties and the Owner's full assessment duties automatically shall be reinstated as of the date a habitable residence is located on the Lot.

7.7 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to

the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

7.8 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Maintenance Association under this **Article 7**, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with JAMS' commercial rules. The mediation and arbitration shall be held in Santa Rosa or such other location as the parties shall agree. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

ARTICLE 8 - Rights of Mortgagees

8.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 8** shall have the definitions contained in this **Section 8.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan Maintenance 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 Maintenance 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 encumbering the same Lot or other portions of the Development.

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

8.3 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 Maintenance 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 5.9**.

8.4 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 Maintenance 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.

8.5 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 9 - Amendments

9.1 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. Before the close of the first sale of a Lot in a second or subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded pursuant to **Article 12** with respect to such phase may be amended in any aspect or rescinded by the Declarant by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to this Declaration. None of the above-described actions by the Declarant prior to the first sale in any phase shall be effective unless approved by the Board of Directors of the Oakmont Village Association, which approval shall not be unreasonably withheld. 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.

9.2 Amendment After Close of First Sale. Subject to the provisions of **Section 13.4**, 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, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, 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. 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 revocation of any provision of this Declaration, no such amendment or revocation 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. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Maintenance Association for that purpose (or, if no one has been designated, the President of the Maintenance Association), and the amendment and certification have been recorded in the county in which the Development is located.

9.3 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Lot Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any Declarations of Annexation, or any exhibits thereto, and the consent of neither the Maintenance Association nor any Lot Owner shall be required provided that if the correction affects the size, location or access or use rights to any Lot, the consent of that Lot Owner shall be required.

ARTICLE 10 - Declarant Disputes

Any claim, dispute or other controversy between 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 10**) 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 B attached hereto and incorporated herein.

The claims procedures in Exhibit B do not apply to any action taken by the Maintenance Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 5.10** of this Declaration.

ARTICLE 11 - Miscellaneous Provisions

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 Access to Books. Any Owner, at any reasonable time and upon reasonable notice to the 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 Maintenance Association.

11.6 Notification of Sale. No later than five days after the closing of the sale of any Lot, the new Owner shall notify the Maintenance 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.

11.7 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.

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

11.9 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 Maintenance 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. The Maintenance 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.

Prior to the commencement of any action by the Maintenance 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 Maintenance Association or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

11.10 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 a majority of the total voting power of the Maintenance 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.

11.11 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 Parcel A or any model homes.

11.12 Assignment by Declarant. With the written consent of the Board of Directors of the Oakmont Village Association, 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 shall 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 assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

11.13 Attorneys' Fees. Except as provided in **Article 10** and **Exhibit B**, in the event of any litigation or alternative dispute resolution procedure arbitration regarding the rights or obligations of the Maintenance

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.

11.14 Notices. Any notice permitted or required by this Declaration, the Articles, 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 Maintenance Association for receipt of notice or, if no such address was provided, at the recipient's Lot address in the Development.

Article 12 - Annexation

12.1 Automatic Annexation. The real property described in **Exhibit A** or any portion of it may be annexed at any time into the Development in one or more phases and made subject to this Declaration at the written election of the Declarant (or by the successors in title to such real property and to whom Declarant has assigned annexation rights). Declarant reserves the right to determine the number of phases, the number of Lots in a phase, and the building types in a phase. Declarant makes no representations or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. Any declaration of annexation recorded in accordance with the terms of this **Article 12** shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Maintenance Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Lots constituting a portion of the annexed real property shall automatically be Members of the Maintenance Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 5.7**.

Declarant expressly reserves for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers and all Owners of Lots, their guests, tenants and invitees for sidewalks, walkways, vehicular access and such other purposes reasonably necessary to the use and enjoyment of all the Lots in the Development. The declaration of annexation may contain complementary additions, amendments and modification to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not consistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in **Section 8.1** to make Lots in the Development eligible for mortgage, purchase, guarantee or insurance.

If the annexed property has been rented for at least one year before the closing of the first Lot in the annexed phase, the Declarant shall pay the Maintenance Association appropriate amounts for reserves for replacement or deferred maintenance of Improvements that the Maintenance Association is required to maintain in the annexed phase.

12.2 Annexation by Approval. Except for the automatic annexation approval contained in **Section 12.1**, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Maintenance Association other than Declarant and such approval of Mortgagees as may be required herein.

ARTICLE 13 - Special Tax District

13.1 Special Tax District. The Special Tax District described in **Section 1.22** (the "District") 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 within the portion of the Lots that front Pythian Road and State Highway 12 that are subject to the "30' Existing Open Space Easement Document Number 2005-102830" shown on the Map described in **Section 1.11** and on the map entitled "The Orchard at Oakmont Unit 2" filed for record on November 9, 2005, in Book 684 of Maps at pages 13 through 18 in the records of Sonoma County, California. The funds to perform the maintenance are collected through special taxes levied by the District against the Special Tax District Lots described in **Section 1.23**. 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.

13.2 Assumption of Maintenance Duties. 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 standard 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.

13.3 Maintenance Costs. All maintenance costs incurred by the Maintenance Association shall be allocated equally among the Special Tax District Lots. Except for the provisions of **Section 5.9**, the rights, duties, benefits and burdens set forth in **Article 5** are incorporated herein by reference in their entirety 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 Special Tax District Lot if any Owner that is delinquent in the payment of assessments. The Maintenance Association shall prepare a separate budget for the maintenance costs and any Special Tax District Lot, upon prior written notice to the Maintenance Association, may inspect the Maintenance Association's books and records relating to the maintenance costs.

13.4 Amendments. Notwithstanding anything herein to the contrary, the provisions of this **Article 13** may not be rescinded or modified without the consent of a majority of the total voting power allocated to the Special Tax District Lots and the written approval of the City of Santa Rosa. For purposes herein, each Special Tax District Lot shall be entitled to one vote. The vote cast by any Owner of a Special Tax District Lot shall conclusively be presumed to be the vote cast by all the Owners of that Special Tax District Lot. The amendment shall be effective when recorded in the records of Sonoma County, California, signed by the president of the Maintenance Association certifying that the amendment was duly approved in accordance with the requirements of this **Section 13.4**.

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

THE WALNUT ORCHARD, LLC
a California limited liability company

By: _____

Its _____

[Signature]
Manager

STATE OF CALIFORNIA

COUNTY OF Sonoma

)
)ss.
)

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

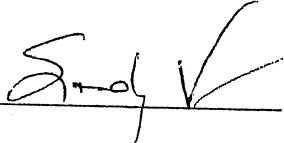


EXHIBIT A - Property to be Annexed

Lots 21 through 35 shown 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 14 through 37 shown on the subdivision 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.*

* Declarant at its discretion reserves the right to establish the order of phases, the number of Residential Lots in a phase, the number of phases, or the building types in a phase.

EXHIBIT B - Claims Procedure

THE ORCHARD AT OAKMONT MAINTENANCE ASSOCIATION

CLAIMS PROCEDURE

EXHIBIT B

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 CCP §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 CCP §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;
- (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.