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**THE MEADOWS AT OAKMONT MAINTENANCE ASSOCIATION**

**DECLARATION**

**OF**

**RESTRICTIONS (CC&Rs)**

**(OAKMONT VILLAGE DECLARATION NO. 54)**

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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

**SCANNED**

**THE MEADOWS AT OAKMONT MAINTENANCE ASSOCIATION**

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**(OAKMONT VILLAGE DECLARATION NO. 54)**

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**THE MEADOWS AT OAKMONT MAINTENANCE ASSOCIATION**

**DECLARATION OF RESTRICTIONS (CC&Rs)**

**(OAKMONT VILLAGE DECLARATION NO. 54)**

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

- A. Declarant is constructing a residential development consisting of 36 residential lots in Santa Rosa, California, more particularly described as Lots 1 through 35 and Lot 39 on the subdivision map entitled "The Meadows at Oakmont" filed in the records of Sonoma County, California, on 7/30/14, in Book 765 of Maps at page(s) 36 through 41. Lots 36, 37 and 38 are not subject to this Declaration.
- 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 Meadows at Oakmont Declaration of Restrictions (CC&Rs) (Oakmont Village Declaration No. 53) recorded on 7-30, 2014 as Document No. 2014052332 in the records of Sonoma County, California (the "Oakmont Village Declaration"). The Oakmont Village 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 the landscaping situated around the perimeter of the Development adjacent to Oakmont Drive and State Highway 12 (the "Landscape Area"). The Meadows at Oakmont Maintenance Association (the "Maintenance Association"), the members of which are the 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 irrigation system and landscaping within the Landscape Area.
- D. Declarant desires to impose certain covenants, restrictions, rights, duties, benefits and burdens 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 and to establish a planned development within the meaning of Civil Code section 4175.

**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 Davis-Stirling Act. The Davis-Stirling Common Interest Development Act as set forth in Part 5 (commencing with Civil Code section 4000) to Division 4 of the Civil Code and any subsequent modifications thereto.
- 1.5 Declarant. Meadow Creek Associates, 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.
- 1.6 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.
- 1.7 Development. Lots 1 through 35 and Lot 39 shown on the Map.
- 1.8 Governing Documents. This Declaration, the Articles of Incorporation and the Bylaws, provided that the Claims Procedure attached as **Exhibit A** is not a part of the Governing Documents.
- 1.9 Improvements. Any fixtures affixed to the Landscape Area within the meaning of Civil Code section 660, including the irrigation system and includes the fence that is within and immediately abuts the Landscape Area, and block retaining walls.
- 1.10 Landscape Area. The northerly boundaries of Lots 1 through 18 and Lot 39 and the westerly boundaries of Lots 1, 19 and 20 that are encumbered by the easements designated "Landscape Easement" on the Map.
- 1.11 Lot or Residential Lot. Lots 1 through 35 and 39 shown on the Map
- 1.12 Maintenance Association. The Meadows at Oakmont Maintenance Association, a California nonprofit mutual benefit corporation.
- 1.13 Map. The subdivision map entitled "The Meadows at Oakmont" filed for record in Sonoma County, California, on 7/30, 2014, in Book 765 of Maps at pages 36 through 41, including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments and/or records of survey.
- 1.14 Member. A member of the Maintenance Association.
- 1.15 Mortgage. A recorded mortgage or deed of trust against one or more Lots in the Development.
- 1.16 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Lot in the Development.
- 1.17 Owner. The owner or owners of the fee (perpetual) estate of a Lot in the Development.

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

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

## ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a planned development within the meaning of Civil Code section 4175 and consists of 36 Residential Lots.

2.2 Property Rights. Each Owner owns a fee (perpetual) estate in a Lot and is a Member of the Maintenance Association.

2.3 Landscape Area Easement and Restrictions. Declarant grants to each Lot Owner in favor of the Lot as the dominant tenement a nonexclusive easement over the Landscape Area as the servient tenement for access to the Landscape Area by agents of the Maintenance Association to inspect, maintain, repair and replace the landscaping and the landscaping Improvements within the Landscape Area.

No person, including any Lot Owner or occupant, may enter the Landscape Area or install or maintain any Improvements or landscaping within the Landscape Area without the prior consent of the Board or the Maintenance Association's manager.

The 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.

2.4 Detention Basin Agreement and Grant of Easement. Storm waters from the Lots in this Development drain into a detention basin situated on Lot 38 shown on the Map. Lot 38 is not subject to this Declaration. Declarant recorded a Detention Basin Maintenance Agreement in the records of Sonoma County, California, on 7-30, 2014 as Document No. 2014052336 (the "Detention Basin Agreement"). Under the terms of the Detention Basin Agreement, the Lot 38 Owner is to maintain the detention basin and the Maintenance Association is to pay an allocable share of the maintenance and repair costs on behalf of the Owners of the Lots in this Development.

The Maintenance Association shall include the share allocated to the Lots in this Declaration in the annual regular assessments levied against the Lots as described in Article 5 and shall tender payment to the Lot 38 Owner in a timely and proper manner. The Maintenance Association is obligated to pay the allocable share in full regardless of whether any of the Lots are delinquent in assessments. It is the Maintenance Association's responsibility to collect the delinquent amount from the delinquent Lot Owner.

The Board shall have full power, right and authority to take all actions under the Detention Basin Agreement on behalf of the Maintenance Association and each Lot Owner, including the right to approve amendments, and the consent of the Lot Owners shall not be required. No individual Lot Owner shall have any right, power or authority exercise any rights under the Detention Basin Agreement.

This **Section 2.4** is a brief summary only of the Detention Basin Agreement. If there is any conflict between this **Section 2.4** and the Detention Basin Agreement, the Detention Basin Agreement shall control.

2.5 Driveway Easement and Maintenance Agreement (Lots 14, 15, 16, 17, 18 and 39). Lots 14, 15, 16, 17, 18 and 39 share the use of a common driveway and are subject to the Driveway Easement and Maintenance Agreement recorded in the records of Sonoma County, California, that sets forth the rights and duties of the Owners and occupants of these Lots regarding the access, use, maintenance, and repair of a common driveway used by these Lots.

2.6 Driveway Easement and Maintenance Agreement (Lots 32, 33, 34 and 35). Lots 32, 33, 34 and 35 share the use of a common driveway and are subject to the Driveway Easement and Maintenance Agreement recorded in the records of Sonoma County, California, that sets forth the rights and duties of the Owners and occupants of these Lots regarding the access, use, maintenance, and repair of a common driveway used by these Lots.

### ARTICLE 3 - Maintenance and Repair Obligations

3.1 Maintenance Association's Maintenance Responsibilities. The Maintenance Association shall maintain the landscaping and landscaping improvements within the Landscape Area, including the fence and block retaining walls within or immediately abutting the Landscape Area, in good condition and repair at all times. The landscaping shall be maintained in a healthy and weed-free condition. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices.

The Maintenance Association shall be responsible for periodic structural repairs to the fence and repainting or re-staining of the side of the fence that faces the Landscape Area. Each Owner is responsible for periodic repainting or re-staining of the side of the fence that faces into the Owner's yard. If an Owner fails to maintain the Owner's side of the fence, the Maintenance Association may, but shall not be obligated to, enter the Owner's yard to maintain the fence and may levy a reimbursement assessment against the Owner's Lot to recover its costs as authorized under **Section 5.5**.

3.2 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 3.1** 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.

3.3 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 4340 through 4370 regarding the election of Board members and related matters that satisfy the requirements set forth in Article 4 (commencing with Civil Code section 5100), Chapter 6 of the Davis-Stirling Act.

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 total outstanding votes held by the Class A Members equal the total outstanding votes held by the Class B Members; or
- (b) the second 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 Article 4 (commencing with Civil Code section 5100), Chapter 6 of the Davis-Stirling Act and if not applicable, 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 4.13 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, access to and use of the Landscape Area, 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 adoption, amendment or repeal of Rules shall satisfy the applicable requirements of Civil Code sections 4340, 4350, 4360 and 4365. 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 9.7**, 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 Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 5900 through 5920.

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 exercise the rights and perform the duties under the Detention Basin Agreement described in **Section 2.4**, perform the maintenance as described in **Section 3.1**, 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**. 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, 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, 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 Landscape Area.

4.10 Reporting and Notice Requirements. The Maintenance Association shall prepare and distribute the documents described in this **Section 4.10**. The annual budget report required under **Section 4.10.1** and the annual policy statement required under **Section 4.10.4** shall be delivered to each Member by individual delivery pursuant to Civil Code section 4040. The Maintenance Association shall deliver either the full report or a summary. If the Member has requested to receive all reports in full, the Maintenance Association shall deliver the full reports to that Member. If a summary is delivered, the summary shall include a general description of the content of the report. Instructions on how to request a complete copy of the report at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary.

4.10.1 Annual Budget Report. An annual budget report for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the Maintenance Association's fiscal year containing the following information:

- (1) A pro forma operating budget showing the estimated revenue and expenses on an accrual basis.
- (2) A summary of the Maintenance Association's reserves prepared in accordance with the requirements in Civil Code section 5565.
- (3) A summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 5550(b)(5). The summary shall include notice to Members that the full reserve study plan is available upon request and the Maintenance Association shall provide the full reserve plan to any Member upon request.
- (4) A statement as to whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;
- (5) A statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 5560, 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;

(6) A statement as to 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; and

(7) 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 statement shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 5570(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.

(8) A statement as to whether the Maintenance Association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(9) A summary of the Maintenance Association's property, general liability, earthquake, flood and fidelity insurance policies. The summary shall include: (i) the name of the insurer; (ii) the type of insurance; (iii) the Policy limits of the insurance; and (iv) the amount of deductibles, if any. To the extent that the information required to be disclosed 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 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 Civil Code Section 5300 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.

The Maintenance Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have lapsed, 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.

4.10.2 Assessment and Reserve Funding Disclosure Summary. The Assessment and Reserve Funding Disclosure Summary form prepared under Civil Code section 5570 shall be distributed with each annual budget report or summary.

4.10.3 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 by individual delivery pursuant to Civil Code section 4040.

4.10.4 Annual Policy Statement. The Board shall distribute an annual policy statement that provides the Member with information about Maintenance Association policies, which shall include the following information:

- (1) The name and address of the person designated to receive official notices sent to the Maintenance Association, pursuant to Civil Code section 4035.
- (2) A statement explaining that a Member may submit a request to have notices sent to up to two different specified addresses, pursuant to Civil Code section 4040(b).
- (3) The location, if any, designated for posting of a general notice, pursuant to Civil Code section 4045(a)(3).
- (4) Notice of a Member's option to receive general notices by individual delivery, pursuant to Civil Code section 4045(b).
- (5) Notice of a Member's right to receive copies of meeting minutes, pursuant to Civil Code section 4950(b).
- (6) The statement of assessment collection policies required by Civil Code section 5730.
- (7) A statement describing the Maintenance Association's policies and practices in enforcing lien rights or other legal remedies for default in the payment of assessments.
- (8) A statement describing the Maintenance Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents pursuant to Civil Code section 5850.
- (9) A summary of dispute resolution procedures, pursuant to Civil Code sections 5920 and 5965. The summary required by Civil Code section 5965 shall include the following language:

"Failure of a Member of the Maintenance Association to comply with all the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of the Member's right to sue the Maintenance Association or another Member of the Maintenance Association regarding enforcement of the Governing Documents or the applicable law."
- (10) A summary of any requirements for Maintenance Association approval of a physical change to property, pursuant to Civil Code section 4765.
- (11) The mailing address for overnight payment of assessments, pursuant to Civil Code section 5655.
- (12) The annual policy statement shall include the notice required by Civil Code section 5730(a) in at least 12-point type.
- (13) Any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.

4.10.5 Transfer Documents. Copies of the transfer documents described in Civil Code section 4525 shall be provided to any Owner or any other recipient requested by Owner within ten days of the mailing or delivery of a written request. The transfer documents shall be provided and reasonable fees charged in accordance with the procedures, requirements and restrictions set forth in Civil Code section 4530.

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 Bureau 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.

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 Landscape Area, 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 Landscape Area or 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 9**. 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 9**. 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 provide Members with access to the Maintenance Association records in accordance with the procedures and requirements in **Article 5** (commencing with Civil Code section 5200) of Chapter 6 of the Davis-Stirling Act.

#### 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 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 sufficient funds to pay the allocable share due from the Lots under the Detention Basin Agreement described in **Section 2.4** and 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 Bureau 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 in accordance with the requirements of Civil Code section 5515.

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 provide general notice pursuant to Civil Code section 4045 of that decision and 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.

(v) a reserve funding plan that indicates how the Maintenance Association plans to fund the contribution identified in paragraph (iv) to meet the Maintenance Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Maintenance Association as described in Article 2 (commencing with Civil Code section 4900) of Chapter 6 of the Davis-Stirling Act. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 5605.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 4177 or any successor statute thereto.

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 subject to the nonjudicial foreclosure restrictions described in this Section 5.5.

In addition to reimbursing the Maintenance Association for costs necessary to repair any 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 a quorum of Members, pursuant to Civil Code section 4070, at a meeting or election. For purposes of this Section 6.6, a "quorum" means more than 50% of the Owners. 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 annual budget report required under Civil Code section 5300, 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 annual budget report containing items (1), (2), (4), (5), (6), (7) and (8) required by Section 4.10.1 for any fiscal year, the Maintenance Association may not increase its annual regular assessment for that fiscal year, unless the Board has obtained the approval of a majority of a quorum of Members, pursuant to Civil Code section 4070, at a Member meeting or election. For the foregoing purposes, a quorum means more than 50% of the Owners of the Maintenance Association.

5.7 Commencement of Regular Assessments. Annual regular assessments shall commence for all Lots on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Lot by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Bureau of Real Estate.

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 9.12.

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 equally among the Residential Lots. Notwithstanding anything herein to the contrary, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the 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.

5.10 Enforcement of Delinquent Assessments. The Maintenance Association may elect to pursue one or more 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**, 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(e)**.

(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 Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act 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.

(c) 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 Article 2 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act.

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 Article 3 (commencing at Civil Code section 5900) of Chapter 10 of the Davis-Stirling Act or alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing at Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act. 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.

(d) 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.

(e) 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 Maintenance 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 Maintenance 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.

(f) 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 5650(b), 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 Civil Code sections 5700 to 5710, inclusive, 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 Occupants or Permittees 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.

(g) A lien created pursuant to Section 5.10.2(f) shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in Article 8.

(h) 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(f)**, the lien may be enforced in accordance with the procedures and requirements set forth in Article 3 (commencing with Civil Code section 5700) of Chapter 8 of the Davis-Stirling Act, including the applicable restrictions against judicial or nonjudicial foreclosure actions for delinquent regular and special assessments in an amount less than \$1,800 described in Civil Code section 5720(b).

(i) 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 Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(j) 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.

(k) 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.

(l) If it is determined 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 required under **Section 5.10.2(a)** and pay all costs related to the dispute resolution or alternative dispute resolution.

**5.10.3 Small Claims Court Resolution.** If a dispute exists between an Owner and the Maintenance Association regarding any disputed charge or sum levied by the Maintenance Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Owner, in addition to pursuing dispute resolution under Article 3 of Chapter 10 of the Davis-Stirling Act commencing with Civil Code section 5925, may pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to Civil Code section 5650(b), and commence an action in small claims court for resolution of the dispute. Nothing in this **Section 5.10.3** shall impede the Maintenance Association's ability to collect delinquent assessments as provided in **Section 5.10.2**.

**The provisions of this Section 5.10 are intended to comply with the requirements of the Davis-Stirling Act. If these sections are amended, restated or rescinded in any manner, the provisions of this Section 5.10 automatically shall be amended, restated or rescinded in the same manner. The Board is advised to confirm the current statutory requirements prior to commencing any delinquent assessment enforcement action.**

**5.11 Restrictions on Association Funds.** Pursuant to the requirements of Civil Code section 5135, 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 Maintenance 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 of the Residential Lots against any liability incident to bodily injury or property damage from an accident or occurrence 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 policy shall include, if obtainable, a cross liability or severability of interest coverage. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, bodily injury and property damage arising out of a single occurrence. The \$1,000,000 coverage may be a combination of primary and excess policies. Such insurance shall include coverage against liability for non-owned and hired automobiles 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 and in sufficient amounts to satisfy the insurance requirements of Civil Code section 1365.7 or any successor statute thereto.

6.2 Insurance Rating, Cancellation and Certification. The insurance required to be carried by the Maintenance Association under **Section 6.1** 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.

6.3 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 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Maintenance Association, provided that the Board shall maintain the minimum insurance requirements set forth in Civil Code sections 5800 and 5805 or in any successor statute thereto. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, 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 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.

6.4 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.

6.5 Other Insurance. In addition to the policies described in **Section 6.1**, 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 - Rights of Mortgagees

7.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 7** shall have the definitions contained in this **Section 7.1**. 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.

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

7.3 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**.

7.4 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.

7.5 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 8 - Amendments

8.1 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. None of the above-described actions by the Declarant prior to the first sale of a Lot 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.

8.2 Amendment After Close of First Sale. After the close of the first sale of a Lot in the Development to a purchaser other than Declarant or an entity controlled by Declarant, 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 4230. 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.

8.3 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 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.

8.4 City Amendment Rights. Notwithstanding anything herein to the contrary, **Sections 1.10, 2.3, 2.4, 2.5, 2.6, 3.1, Article 5, this Section 8.4 and Sections 10.6, 10.8 and 10.13** shall not be modified or rescinded without the City of Santa Rosa's prior written consent, except for any amendment required by a change in applicable law.

#### ARTICLE 9 - Maintenance Guidelines and Declarant Disputes

Declarant shall provide each Owner with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain improvements and personal property situated within the Development with respect to the improvements and landscaping to be maintained by that party (collectively the "Guidelines"). Each Owner shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's 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.

Any claim, dispute or other controversy between any Owner(s) and/or the Maintenance Association and the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Article 9) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of any improvements or landscaping located within the Development, including any claims made under Civil Code sections 896 and 897 (individually and collectively the "Claim") shall be subject to the claims procedures set forth in Exhibit A attached hereto and incorporated herein.

#### ARTICLE 10 - Miscellaneous Provisions

10.1 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.

10.2 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.

10.3 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.

10.4 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, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in Government Code section 12955(p), or ancestry.

10.5 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.

10.6 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.

10.7 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, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Lots in the Development.

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

Notwithstanding anything herein to the contrary, the 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. If any Owner or occupant desires the Maintenance Association to take any enforcement action, the Owner or occupant shall notify the Maintenance Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Maintenance Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Maintenance Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Act or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Maintenance Association, the Declarant or the Owner shall comply with the applicable requirements of Article 3 (commencing with Civil Code section 5925) of Chapter 10 of the Davis-Stirling Act.

10.8 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 and the consent of the City of Santa Rosa. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

10.9 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 within the Development;
- (ii) use such portions of the Development as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction and/or sales offices within the Development and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements within the Development;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Development to inspect the Development or any model homes.

10.10 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 rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant assigned or delegated 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.

10.11 Attorneys' Fees. Except as provided in Article 9 and Exhibit A, 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. Notwithstanding anything herein to the contrary, this provision shall not apply to the City of Santa Rosa (the "City"), rather any recovery of attorneys' fees shall be subject to applicable law.

10.12 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.

10.13 Right of City to Compel Maintenance of Landscape Area. In consideration of the approval by the City of Santa Rosa of the development of the real property to which this Declaration relates, Declarant hereby covenants and agrees and each Owner of any Lot covered by this Declaration by the acceptance of a deed to a Lot, whether or not this Declaration shall be so expressed in the deed, and all heirs, executors, administrators, assigns and successors in interest of each such Lot Owner is deemed to covenant and agree as follows:

(i) City May Compel Performance. In the event the Association fails to provide for the maintenance of the Landscape Area described in Section 1.10 to the end that the same shall at all times present a neat, clean and well-kept appearance, the City shall have the right, but not the duty, to compel such maintenance in the manner hereinafter provided.

In the event the Association fails to provide for the maintenance of storm drain facilities in compliance with current City requirements, the City shall have the right, but not the duty, to compel such maintenance in the manner hereinafter provided.

After due notice to the Association and a public hearing, the City Council shall authorize and direct the giving of sixty (60) days written notice to the Association to correct such failure to maintain the Landscape Area. In the event the Association shall fail to take steps satisfactory to the City to correct such failure within the sixty (60) day period, the City shall have the right to do any of the following:

(a) Do or perform any act the Association is authorized to perform under the provisions of this Declaration, which may be necessary for the maintenance of the Landscape Area, including, but not limited to, the performance of the necessary maintenance and the levy and collection of the cost of doing such maintenance in accordance with the assessment procedures set forth in this Declaration.

(b) Take such legal action as may be necessary to compel performance by the Association.

(ii) Costs of Enforcement. In the event the City shall exercise any of the remedies afforded to it under subsection (i), any sums recovered from any suit or foreclosure sale or judicial foreclosure proceedings shall be applied first to cover the City's costs of suit or foreclosure, including but not limited to, filing fees, title company charges, miscellaneous foreclosure costs and reasonable attorneys' fees. The balance of any sums so recovered shall then be applied against any amount which is then lawfully owing to

the City or other public entities. All remaining sums shall be paid to the Owner of property foreclosed upon as his or her interest may appear. Failure of the City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.


(iii) Indemnification of City. In consideration of and as a condition of approval of the Development, Declarant on behalf of itself and its successors and assigns and the Association does hereby release, discharge, hold and save harmless the City of Santa Rosa, its officers and employees from any and all liability claims or demands arising out of the inadequate or negligent maintenance of the Landscape Area or improvements thereto.

Should the City be joined or named as a party in any legal proceedings or in any other action related to the maintenance responsibilities of the Association or the individual Members thereof, Declarant, its successors and assigns and the Association do hereby agree to indemnify, hold harmless and defend or settle any and all claims or actions against the City and to pay any and all claims, damages, judgments or other liability costs and expenses, including attorneys' fees and reasonable defense costs incurred in connection therewith.

THIS DECLARATION is executed this 15<sup>th</sup> day of April, 2014.

MEADOW CREEK ASSOCIATES, LLC  
a California limited liability company

By:

  
Its Managing Member

STATE OF CALIFORNIA  
COUNTY OF Sonoma

On April 15, 2014 before me, Sandy VEVEIROS a Notary Public,  
personally appeared BEN VANZUTPHEN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Sandy V*  
Sandy VEVEIROS

Name (typed or printed), Notary Public in  
and for said County and State.



(seal)

EXHIBIT A - Claims Procedure

THE MEADOWS AT OAKMONT MAINTENANCE ASSOCIATION

CLAIMS PROCEDURE

EXHIBIT A

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

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

Any claim, dispute or other controversy between: (i) any Owner(s) and/or the Maintenance Association (the "Claimant") and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code §911 or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Exhibit) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or labor or other services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or operation of any Improvements or landscaping located within the Development, including but not limited to any claims for violation of the functionality standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statutory violation (individually and collectively the "Claim"), shall be subject to the claim procedures set forth in Sections 1 and 2 of this Exhibit. Construction defect claims for actual damages are subject to Title 7, Part 2 of Division 2 of the Civil Code ("Title 7") in the same manner and to the same extent that Title 7 applies to claims for economic damages.

The intention and purpose of this Exhibit is to provide that all Claims against the Declarant relating to the Development be resolved in accordance with the claims procedures set forth in this Exhibit regardless of the legal theory upon which the Claim is based so that a certain and efficient method is established for resolution of the Claim. As a result, any Claim based on misrepresentation, fraud, breach of contract, violation of a statute or personal injury, as well as Claims for breach of the functionality standards, are subject to the claims procedures in 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 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.

2. Binding Adversarial Procedures If Claimant and Declarant cannot resolve the entire Claim in accordance with the procedures in **Section 1** of this Exhibit or if corrective action is undertaken by Declarant and the parties disagree on the adequacy of the corrective action or any other claims arising from the corrective action, the portion of the Claim not resolved, including any unresolved claims arising out of the corrective action undertaken by Declarant or Declarant's agents, shall be resolved in accordance with the following binding procedures.

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

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

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

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

(c) Discovery. Within twenty days after appointment of the Referee, each party shall serve on each other party all documents relevant to the dispute and all documents that the party intends to

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

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

(e) Hearing. The parties shall cooperate to assure a prompt and timely commencement of the hearing. The hearing must commence within three months after appointment of the Referee and shall not exceed seven days in length without the approval of all parties. All hearings shall be held in Sonoma County, unless the parties agree to some other location. The hearing shall be conducted in the same manner as it would be before a court, including, but not limited to, the laws and rules of evidence, unless the parties otherwise agree in writing.

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

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

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

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

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

Claims Notice Agent - The Meadows at Oakmont  
100 B Street, Suite 210  
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 number and website for the Secretary of State's office are: (916) 653-3984 and [www.ss.ca.gov](http://www.ss.ca.gov). Written request can be mailed to the California Secretary of State, Special Filings, P.O. Box 942877, Sacramento, California, 94277-0001.

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

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

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

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

5. **Covenants** The covenants, restrictions, rights, duties, benefits and burdens set forth herein benefit and bind each Lot and each Owner and successive Owner thereto as covenants running with the land and equitable servitudes and as authorized under Civil Code sections 945 and 5975.

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.