

RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

SHADOW HILLS ESTATES HOMEOWNERS' ASSOCIATION
a non-profit mutual benefit corporation

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.

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RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

SHADOW HILLS ESTATES HOMEOWNERS' ASSOCIATION
a California nonprofit mutual benefit corporation

This Restated Declaration of Covenants, Conditions and Restrictions (“Declaration”), effective as of the date of recordation hereof, is made by Shadow Hills Estates Homeowners’ Association (“Association”).

PREAMBLE

A. The Association is comprised of all Persons (defined in Section 1.27 below) who own Lots (defined in Section 1.22 below) in that certain common interest development located in the City of Los Angeles, County of Los Angeles, State of California known as Shadow Hills Estates (“Development”), more particularly described in Exhibit A attached hereto and incorporated herein by reference;

B. The Association intends by this Declaration to revoke the *Declaration of Covenants, Conditions and Restrictions* recorded on April 2, 1981 as Document No. 81-332626 in the official records of Los Angeles County, California (the “Original Declaration”) to which the Development is currently subject, as well as all amendments thereto;

C. The Association is a California nonprofit mutual benefit corporation formed to manage the Development.

D. This Declaration is intended to:

- (i) Be for the benefit and protection of the Development and each Lot;
- (ii) Be for the benefit of all Owners;
- (iii) Run with the land and be binding upon all parties having or acquiring any right, title or interest in any Lot or in the Development; and
- (v) Run with the land and be binding upon any Resident, Guest, or other person entering the Development at any time for any reason.

NOW, THEREFORE, the Association hereby adopts the following covenants, conditions and restrictions.

ARTICLE 1 DEFINITIONS

Whenever used in this Declaration, the following capitalized terms shall have the following meanings. Wherever reference is made in this Declaration to a statute or law, such reference shall mean and refer to a State of California statute or law, unless the context clearly indicates otherwise.

1.1 “Annual Budget Report” shall mean the “annual budget report” prepared by the Association pursuant to the Davis-Stirling Act.

1.2 “Annual Policy Statement” shall mean the “annual policy statement” prepared by the Association pursuant to the Davis-Stirling Act.

1.3 “Architectural Committee” shall mean the committee formed pursuant to Article 8 of this Declaration to administer and enforce the architectural and design control guidelines contained in the Governing Documents.

1.4 “Articles” shall mean the articles of incorporation of the Association filed with the California Secretary of State, as may be amended from time to time.

1.5 “Assessment” shall mean any assessment charge levied against a Lot and its Owner to pay for expenses incurred by the Association in accordance with this Declaration and as permitted by the Davis-Stirling Act, and shall include Regular Assessments, Reimbursement Assessments, and Special Assessments.

1.6 “Association” shall mean Shadow Hills Estates Homeowners’ Association, a California nonprofit mutual benefit corporation.

1.7 “Board” and “Board of Directors” shall mean the board of directors of the Association, whose members are elected by the Owners or otherwise appointed as provided in the Bylaws.

1.8 “Bylaws” shall mean the bylaws of the Association, as may be amended from time to time.

1.9 “Common Area” shall mean the entire Development except for the Lots. The Common Areas are comprised of, without limitation, a monument sign at the entrance to the Development, Landscaped Areas, equestrian trails, open spaces, and slopes.

1.10 “Common Expenses” shall mean all costs, expenses and charges incurred by the Association in maintaining, repairing and replacing the Common Areas and managing and operating the Association and the Development, as estimated from time to time by the Board of Directors, including Reserves.

1.11 “Davis-Stirling Act” shall mean the Davis-Stirling Common Interest Development Act, codified as Sections 4000 through 6150 of the California Civil Code.

1.12 “Declaration” shall mean this Restated Declaration of Covenants, Conditions and Restrictions, as may be amended or restated from time to time.

1.13 “Development” shall mean the entire common interest development commonly known as Shadow Hills Estates, which is a “planned development”, as defined in the Davis-Stirling Act.

1.14 “Drainage Courses” shall mean those areas utilized for the removal of surface water from more than one Lot.

1.15 “Exclusive Use Common Area” shall mean a portion of the Common Area designated for the exclusive use of one (1) or more, but fewer than all, of the Owners and which is appurtenant to a Lot or Lots.

1.16 “Governing Documents” shall mean the Articles of Incorporation, this Declaration, the Bylaws, the Rules, and any other documents which govern the operation of the Development or the Association, as may be amended from time to time.

1.17 “Guest” shall mean any person who enters the Development at any time at the request or for the benefit of an Owner or a Resident but who does not reside in the Development. A “Guest” shall include, collectively and without limitation, any invitees, social guests, houseguests, contractors, employees, and service providers, such as gardeners, pool cleaners, and the like, of an Owner or a Resident.

1.18 “Home” shall refer to a single-family home and all other structures of any kind, including without limitation guest homes, situated on a Lot.

1.19 “Improvements” shall mean all buildings, structures, landscaping, slopes and other physical components now or hereafter constructed in the Development.

1.20 “Landscaped Areas” shall mean that portion of the Common Area on which grass, shrubs, flowers, ground cover, and trees currently exist or are planted in the future.

1.21 “Lease” shall mean a lease or rental agreement entered into between an Owner and a tenant for the tenant’s occupancy of the Owner’s Lot.

1.22 “Lot” shall mean any numbered lot or parcel of land shown upon any recorded subdivision map or recorded parcel map on which a Home has been or may be built. All references in this Declaration to a Lot shall be construed to include a reference to all Improvements on the Lot including without limitation a Home. There are a total of seventy-eight (78) Lots in the Development.

1.23 “Manager” shall mean any Management Company or Person employed by the Association to oversee the operation, maintenance and management of the Development.

1.24 “Member” shall mean an Owner, who by reason of his or her record title ownership of a Lot holds a membership in the Association.

1.25 “Mortgage” shall mean any mortgage, deed of trust or other security device encumbering all or any portion of the Development or any Lot located therein.

1.26 “Owner” shall mean the person, firm, corporation or other legal entity in which title to a Lot is vested as shown in the Official Records of the Office of the Los Angeles County Recorder, but excluding those having such an interest merely as security for the performance of an obligation.

1.27 “Person” shall mean a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity, and shall include (except where the context otherwise requires) an Owner.

1.28 “Personal Property” shall mean all tangible and intangible personal property owned, held or controlled by the Association.

1.29 “Regular Assessment” shall mean an annual Assessment levied by the Association pursuant to the Davis-Stirling Act against the Owners and their Lots as described in this Declaration to pay for the Common Expenses.

1.30 “Reimbursement Assessment” shall mean an Assessments levied by the Association against an individual Owner as a means of reimbursing the Association for costs incurred by the Association: (1) in the repair of damage to Common Area caused by the Owner, a Resident of the Owner’s Lot, or a Guest of either; (2) on behalf of and for the benefit of the Owner, whether with the Owner’s consent or pursuant to the Association’s powers under the Governing Documents or law, including, without limitation, the performance of maintenance or repairs to the Owner’s Lot for which the Owner is responsible; and/or (3) due to the negligence, willful acts, or omissions of the Owner, a Resident of the Owner’s Lot, or a Guest of either, including, without limitation, an increase in the insurance premiums for any insurance policy purchased or obtained by the Association for the benefit of the Development and the Owners.

1.31 “Reserves” or “Reserve Accounts” shall mean those monies set aside in a separate account for the purpose of making long-term repairs, replacements, and restorations of the major Common Area components of the Development that the Association is obligated to maintain pursuant to the provisions of this Declaration.

1.32 “Resident” shall mean any person residing in a Home, including, but not limited to, tenants, occupants, and family members living in the Home. A person shall be deemed to be residing in a Unit if he or she sleeps or stays (or intends to sleep or stay) in the Unit

overnight for more than thirty (30) consecutive days or more than sixty (60) days in any calendar year.

1.33 “Rules” shall mean all rules, regulations and policies, including without limitation architectural and landscaping guidelines, that apply generally to the management and operation of the Development or the conduct of the business and affairs of the Association, as may be adopted and amended from time to time in accordance with the Davis-Stirling Act.

1.34 “Special Assessment” shall mean those Assessments levied against the Members collectively by the Association to supplement budgeted Regular Assessments for any fiscal year because the amount to be collected from Regular Assessments for that fiscal year will, for any reason, be inadequate to defray the Common Expenses.

1.35 “Structure” shall mean any Home, other living quarters, building, garage, driveway, parking area, porch, covered or uncovered patio, shed, gazebo, greenhouse, tennis or sports court, fence, wall, and other hardscape located on a Lot.

1.36 “Visible” shall mean observable from an adjacent Lot, sidewalk, or street.

1.37 “Yard” shall refer to the front, side and rear yards which comprise that portion of the Lot surrounding the Home, if any, including all landscaping and hardscape as well as fences, walls, irrigation, and drainage located in, on or under the yard.

ARTICLE 2

OWNERSHIP RIGHTS, LIMITATIONS, AND EASEMENTS

Each Owner, by virtue of his or her membership in the Association, shall be entitled to certain rights and benefits described below in this Article 2. The rights and benefits are subject to limitations, however, as listed in Section 2.10 and elsewhere in the Governing Documents.

2.1 Right to Membership in Association. All Owners shall automatically be deemed Members of the Association and shall be entitled to the rights and benefits of membership subject to the limitations contained in the Governing Documents.

2.2 Interest In Common Area. The Common Area shall be owned by each Member in equal, undivided one seventy-eighth (1/78) fractional interests, as tenants-in-common.

2.3 Right to Structural Support. Each Owner shall have a nonexclusive easement for ingress, egress, and support over, across and through the Common Area for the structural support of his or her Lot.

2.4 Right to Vote. Each Owner shall have the right to vote in all Association elections as provided in the Governing Documents, subject to the limitations or exceptions set forth therein.

2.5 Right to Inspect Records. Members shall have the right to inspect records of the Association as provided in the Davis-Stirling Act and the Bylaws.

2.6 Right to Quiet Enjoyment. Each Owner is entitled to the quiet enjoyment and peaceful possession of such Owner's Lot (and, as may be applicable, his Exclusive Use Common Areas).

2.7 Utility Rights. Each Owner shall be deemed to own that portion of all surface drains, underground drain lines, pipes, wires, conduits, and public utility lines for sewer, storm drains, water, electricity, gas, telephone, television cables, and air conditioning, which run through, below, or on his or her Lot and are utilized for the benefit of that Owner's Home and Yard. To the extent such elements are not maintained or repaired by a public agency, authority, or utility, it shall be the duty of the Owner to maintain, repair and replace such components wherever located, and the Owner shall have a nonexclusive easement over all areas of the Development for the purpose of meeting this duty. If a segment of pipe, wire, or line serves more than one Lot, the Owners whose Lots are serviced thereby shall jointly be responsible for its maintenance, repair and replacement.

2.8 Common Area Easements. The Owner of each Lot shall have appurtenant to such Owner's Lot an easement over the Common Area for ingress, egress, use, occupancy and enjoyment, and, where applicable, for the construction, maintenance and operation of utilities. All such easements are subject, without limitation, to the following:

a. The right of the Association to discipline Members during any period in which Assessments against his or her Lot remain unpaid, and for any infraction of the Governing Documents.

b. The right of the Association to dedicate, transfer or encumber all or any part of the Common Area to any public agency, authority, or utilities for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or encumbrance shall be effective until it has been approved by an affirmative vote of at least two-thirds (2/3) of the Members;

c. The right of the Association to grant easements under, upon, across, over, above or through any portion of the Common Area which are beneficial to the Development.

2.9 Slope and Drainage Easements. Each Lot is burdened by an easement in favor of Owners of adjacent Lots for slopes or drainage ways essential for the maintenance of the drainage facilities on such adjacent Lots. No Lot shall be used, altered or maintained so as to interfere with the established drainage pattern over any adjacent Lot. For the purposes hereof, "established drainage" is defined as the finished grade drainage originally installed on a Lot, including the improvements constructed and slope landscaping installed on each Lot.

2.10 Limitations. The rights described above in this Article 2 and elsewhere in the Governing Documents are subject to the following limitations:

- a. ***Suspension of Rights.*** An Owner's right to vote and utilize any Common Area recreational facilities and amenities may be suspended under the circumstances and according to the procedures described elsewhere in the Governing Documents;
- b. ***No Separation of Interests.*** An Owner's Lot, interest in the Common Area, membership in the Association, and exclusive easements shall not be separated or separately conveyed. Any conveyance of a Lot shall be deemed to automatically include fee title to the Lot, an undivided fractional interest in the Common Area, membership in the Association, and the easements specified in this Declaration, whether mentioned or omitted in the deed to the Owner's Lot;
- c. ***Prohibition Against Partition.*** There shall be no judicial partition of the Development or any part thereof. Neither the Association nor any Person acquiring an interest in the Development may seek any judicial partition, except as allowed, if at all, in the Davis-Stirling Act;
- d. ***Subdivision and Combination of Lots.*** No Lot may be physically or legally subdivided, nor may any Owner combine two (2) or more adjoining Lots.
- e. ***Health and Safety.*** The right of the Association to impose reasonable conditions on the use of the Common Area, including the facilities therein, to protect the health and safety of the Members and other Persons using them and to protect the Common Area from damage or premature deterioration;
- f. ***Rules.*** The right of the Association to adopt, amend and repeal, from time to time, Rules pursuant to the Davis-Stirling Act; and
- g. ***Governing Documents.*** Any other reasonable restrictions and limitations contained in the Governing Documents.

ARTICLE 3
ASSOCIATION RIGHTS AND DUTIES

The Association shall have the powers, rights, and duties which are specified below in this Article 3 and elsewhere in the Governing Documents.

3.1 General Powers and Authority. The Association shall have all the powers of a nonprofit mutual benefit corporation organized and operating pursuant to the California Corporations Code. The Association shall have the authority to do all lawful things which are necessary or proper in operating the Development for the peace, health, comfort, safety, and general welfare of the Owners. Without limiting the foregoing, the Association shall act in conformance with, and subject to the limitations contained in, the Governing Documents.

3.2 Specific Powers. The Association shall have full authority to do the following acts.

a. **Levy Assessments.** The Association shall have the right and power to establish, fix, levy, collect, and enforce the payment of Assessments on the Members, pursuant to Articles 5 and 6 of this Declaration and applicable California law, to defray the cost of paying the budgeted gross annual expenses of the Association and any other legitimate costs which the Board deems prudent in the management and operation of the Association or the Development;

b. **Adopt Rules.** The Board shall have the power to adopt, amend, and repeal Rules in accordance with the procedures described in the Davis-Stirling Act. Upon adoption, the provisions of the Rules will have the same force and effect as though set forth in this Declaration;

c. **Member Discipline.** The Association shall have the power to impose discipline in the form of sanctions, including fines and suspensions of privileges and rights, as described elsewhere in this Declaration and the other Governing Documents;

d. **Make or Settle Claims.** The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, and to seek injunctive, equitable, declaratory, or monetary relief in its own name as the real party in interest and without joining the Owners as described in the Davis-Stirling Act;

e. **Borrow Money.** The Association shall have the power, but not the duty, to borrow money as may be needed in the discharge of its powers and duties, and the power, but not the duty, to cause to be executed and delivered, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for same, subject to any restrictions set forth in the Governing Documents;

f. **Right of Entry.** The Association shall have the right to enter any Lot (but not the Home on the Lot), in the presence of the Owner thereof where reasonably possible, for the purpose of (i) performing necessary maintenance, repairs, or replacements to the Common Area, (ii) abating any nuisance or dangerous, unauthorized, prohibited or unlawful activity, (iii) performing any maintenance or repairs which the Owner has failed to perform, or (iv) for any other purpose reasonably related to the performance by the Association of its responsibilities under this Declaration. Except in the case of an emergency, entry shall be preceded by at least 24 hours' advance written notice to the Owner. No Person entering a Lot under the authority granted in this paragraph will be liable for trespass; however, the Association will promptly repair any damage it causes to the Lot except for damage that resulted from the Owner's failure or refusal to allow entry.

g. **Security Deposit.** The Board shall have the power to charge reasonable security deposits for extraordinary use of the Common Area and facilities or performance of acts (including construction and remodeling) within the Development, to the extent permitted by the applicable law;

h. **Enforce Governing Documents.** The Association shall have the power to enforce the Governing Documents by any means provided therein or under California law;

i. **Contract for Goods and Services.** The Association shall have the power to contract for goods and services as reasonably required to protect, manage, and operate the Association and the Development including without limitation contracts for utility services for the Common Area, insurance, management services, accounting services, legal services, security services, cable or satellite services, maintenance and repairs, gardening and landscape services, supplies, and all other expenses reasonably required for the Association to perform its powers and duties under the Governing Documents. The length of any such contract shall not exceed one (1) year unless the Board adopts a formal resolution stating that the best interests of the Association are served by entering into a contract for a longer period, which in no event shall exceed a maximum length of five (5) years;

j. **Pay Taxes.** The Association shall have the power to file tax returns and pay taxes levied against it by virtue of its corporate existence and its operations;

k. **Corporate Standing.** The Association shall have the power to prepare and file documentation and pay such expenses as are required to maintain its corporate status in good standing; and

l. **Miscellaneous.** The Association shall have the power to incur expenses, subject to the limitations in this Declaration, to promote the health, safety, management, operation, and enhancement of the Development.

3.3 Maintenance. The Association shall have the power and the duty to maintain the Common Areas in good, clean, and sanitary condition, except to the extent such power and duty is otherwise provided to any Owner in this Declaration.

3.4 Board of Directors. The affairs of the Association shall be managed and its duties and powers performed by a Board of Directors whose members are elected or otherwise appointed as provided in the Bylaws. Such duties and power shall be discharged when and in such manner as the Board determines in its judgment to be appropriate.

3.5 Committees. The Board may appoint committees as it deems prudent from time to time to assist in performing functions determined by the Board. The Board President will be deemed an *ex officio* member of any committee appointed. Other than the Architectural Committee, whose functions are described in Article 8 of this Declaration, all other committees are discretionary and shall act in an advisory capacity only subject to any limitations imposed by the Board.

3.6 Meetings. The Association shall conduct at least one membership meeting annually to elect directors and conduct any other legitimate business which may be raised at the meeting. The meetings shall be conducted as prescribed in the Bylaws.

3.7 Limitation of Liability. The following limitations on liability shall apply.

a. **Limited Obligation to Act.** The rights and powers conferred upon the Board, the Architectural Committee or other committees of the Association, or the members thereof, or any other representatives of the Association by the Governing Documents are not duties, obligations, or liabilities charged upon those Persons unless such rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed upon the Board, the Architectural Committee or other committees of the Association, or the members thereof, and/or any other representatives of the Association by the Governing Documents or law, such Persons shall have the right to decide to act or not act. Any decision not to act by such Persons shall not be a waiver of the right to act in the future.

b. **Liability for Injuries and Damage.** No Person shall be liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts (defined in Section 3.8), except to the extent that such injuries result from the Person's willful or malicious misconduct. No Person is liable to the Association (or any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association shall not be liable for damage to a Lot, unless such damage was caused by the willful misconduct or gross negligence of the Association or any of its Directors, officers, agents, representatives, or employees.

c. **Personal Liability of Directors and Officers.** A volunteer Director or volunteer officer of the Association shall not be personally liable to any Person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, as a result of the tortious act or omission of the volunteer Director or volunteer officer of the Association if all of the following criteria are met: (1) the act or omission was performed within the scope of the Director's or officer's Association duties; (2) the act or omission was performed in good faith; (3) the act or omission was not willful, wanton, or grossly negligent; and (4) the Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance including coverage for (A) general liability of the Association and (B) individual liability of Directors and officers of the Association for negligent acts or omissions in that capacity, in the types of coverage and in the minimum amounts prescribed under the Davis-Stirling Act. The payment of actual expenses incurred by a Director or officer of the Association in the execution of the duties of that position does not affect the Director's or officer's status as a volunteer within the meaning of this subsection. Notwithstanding the foregoing, the limitation of liability set forth in this subsection shall only apply to a volunteer Director or officer of the Association who is an Owner of no more than two (2) Lots in the Development.

3.8 Indemnification. To the fullest extent authorized by law, the Association shall indemnify all Board members, Association officers, Architectural Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission which such person reasonably believed to be within the scope of his or her duties (each, an "Official Act"). Board members, Association officers, Architectural Committee members, and all other Association committee members are deemed to be agents of

the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section 3.8. The entitlement to indemnification under this Section 3.8 shall inure to the benefit of the estate, executor, administrator, and heirs of any person entitled to such indemnification. Notwithstanding the foregoing, the Association shall not be required to provide the foregoing indemnification to any Board member, Association officer, Architectural Committee member, or any other Association committee member who is determined: (1) not to have acted in accordance with the requirements of Section 7231 of the Corporations Code (the provisions of which are commonly referred to as the “business judgment rule”); (2) under Section 7237 of the Corporations Code to have acted in bad faith in the performance of such person’s duties and, in the case of a criminal proceeding, to have had reasonable cause to believe such person’s conduct was unlawful; or (3) to have acted with willful or malicious misconduct. The Association has the power, but not the duty, to the fullest extent authorized by law, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

3.9 Prohibited Acts. In addition to the other limitations set forth in the Governing Documents, the Association shall not: (1) use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Development; or (2) conduct, sponsor, participate in, or expend funds or resources on any activity, campaign, or event, including, but not limited to, any social or political campaign, event, or activity, which does not directly and exclusively pertain to the authorized activities of the Association.

ARTICLE 4

MAINTENANCE OBLIGATIONS

The Development shall be maintained at all times in good condition so as to preserve the property values of the Lots, the quiet enjoyment of the Residents, and the right of each Owner to the full use and occupancy of his or her Lot and the Home and Yard thereon. The respective rights and duties of the Association and the Owners with regard to maintenance of the Development are described in this Article 4.

4.1 Maintenance by Owners. Every Owner shall at his or her sole expense:

- a. Maintain, repair, replace and restore all portions of his or her Home in good repair and in clean, sanitary and attractive condition at all times;
- b. Maintain, repair, replace and restore all portions of his or her Yard, which is within the boundaries of the Lot, so it is in good repair and in neat, clean, and attractive condition at all times;
- c. Maintain in an open and unobstructed condition all sewer, water, and drainage pipes and lines serving his or her Lot wherever located, except as maintained by a governmental agency;

d. Maintain, replace, repair and restore all other elements of his or her Lot, which includes weeding brush clearance areas to the extent located within the Lot;

e. Remove all waste and debris on the Lot affiliated with all animals, whether or not such waste and/or debris was created by an animal owned by such Lot's Owner, including but not limited to horses, from the Development regularly and in no event less than once per week; and

f. Clear and maintain in good condition all brush, swales, culverts and Drainage Courses on his or her Lot.

4.2 Failure to Maintain. If an Owner fails to maintain any portion of his or her Lot or other item the Owner is obligated to maintain, the Association has the power, but not the duty, to perform the maintenance, including corrective janitorial and repair work. In a situation that the Association determines to be an emergency, the Association may perform the maintenance immediately; in all other cases, the Association may perform the maintenance after notice and a disciplinary hearing in accordance with the provisions of the Governing Documents. For purposes of the foregoing sentence, an "emergency" is any situation where there is an imminent risk of injury to Persons or damage to property within the Development. The cost of any such corrective work shall be levied against the Owner as a Reimbursement Assessment.

4.3 Maintenance by the Association. The Association shall be responsible for the maintenance, repair and replacement of those items for which the same is not allocated to the Owners in this Declaration, subject to an Owner's obligation to reimburse the Association for costs incurred by the Association for such maintenance due to damage caused by or resulting from the negligence, acts, omissions, or willful misconduct of the Owner, a Resident of the Owner's Lot, or a Guest of either. Without limiting the foregoing, the Association's maintenance obligations shall include:

a. Maintenance, repair and replacement of Common Area improvements;

b. Maintenance, repair and replacement of all portions and elements of the Development other than those specified in this Declaration to be part of the Lots; and

c. Maintenance, repair and replacement of the brush clearance areas, and all Drainage Courses, not located on a Lot.

4.4 Shared Maintenance. A common wall, fence, or other building element which sits on the border/property line of two (2) or more Lots shall be referred to herein as a "Party Wall". Each Owner who has an interest in a Party Wall shall be required to maintain, and pay for the maintenance of, such Party Wall pursuant to the provisions of this Section 4.4; this Section 4.4 is not intended to limit or modify any other maintenance obligations of the Owners under this Declaration. To the extent not inconsistent with the provisions of this Section 4.4, the general rules of law regarding Party Walls and liability for property damage to Party Walls due to negligence or willful acts or omissions shall apply.

a. Each Owner of a Lot sharing a Party Wall shall have a mutual and reciprocal easement in and to the interior portion of said Party Wall that is located upon the adjoining Owner's Lot.

b. Each Owner shall maintain in a good state of repair the side of the Party Wall facing the Owner's Lot. Each Owner may decorate the side of the Party Wall facing his or her Lot in his or her reasonable discretion, subject to the provisions of this Declaration.

c. The cost of reasonable maintenance of a Party Wall, including the Improvements located therein (such as, without limitation, any water, gas, electricity, heating, air conditioning, and other utility transmission lines, pipes, installations, equipment, ducts, chutes, conduits, wires, and the like, as may exist), shall be shared by the Owners who make use of the Party Wall in equal proportion to such use.

d. Nothing shall be altered or constructed on or removed from a Party Wall, except upon the written consent of the Owners of all Lots sharing the Party Wall and only so long as the structural, acoustic, or fire-retardant quality of the Party Wall, as may be applicable, is not impaired. Such alteration, construction, or removal shall be subject to any architectural and design control requirements contained in this Declaration.

e. If any portion of a Party Wall or the Improvements therein are damaged or destroyed through the negligent or willful acts or omissions of an Owner of a Lot, or a Resident of or Invitee to the Owner's Lot, the Owner responsible for the damage or destruction shall be required to make any and all necessary repairs to the Party Wall to restore the Party Wall and the Improvements therein to the same condition existing prior to the damage or destruction, without cost to any adjoining Owner.

f. In the event of a dispute between Owners with respect to the servicing or repair of a Party Wall or installations therein, or with respect to the sharing of the cost thereof, the matter may be submitted to the Board for resolution upon written request of either Owner; any decision of the Board on such matter shall be final, binding, and conclusive upon the parties. Should the Board determine, in its sole discretion, that the matter is a neighbor-to-neighbor dispute and/or that the Association should not be involved in the dispute, the Board shall have no obligation to resolve the matter and the Owners shall be responsible for resolving the dispute between themselves.

4.5 Damage to Lots. Each Owner shall be responsible for repairing and restoring any damage to the Owner's Lot, whether such damage is caused by fire, water intrusion, or other casualty, including, but not limited to, the abatement of mold; this obligation shall apply no matter the cause or source of the damage, including, but not limited to, an Improvement or item located within the Common Area or another Lot.

a. The Association shall not be liable for the costs incurred by an Owner to repair or restore any damage to the Owner's Lot caused by or resulting from pipes, drains, conduits, appliances, equipment, electrical sources, roofs, or any other Improvement or item located within and a part of the Common Area, unless such damage was caused by the willful misconduct or gross negligence of the Association or any of its Directors, officers, agents, representatives, or employees. In no event shall the Association be liable for damage to a Lot caused by an Owner, Resident, or Invitee, or resulting from an Improvement or item which is located within another Lot and/or the responsibility of an Owner. Notwithstanding the foregoing, if the Association performs any maintenance, repair, or remediation work within a Lot to abate water or other substances, or damage, within the Lot in order to protect and preserve the Common Area or other items for which the Association is responsible, such action by the Association shall not be deemed to be an admission or acceptance of liability for any damage to an Owner's Lot.

b. Each Owner shall maintain the insurance coverage and policies required of Owners under this Declaration. An Owner shall be required to submit a claim against his or her personal insurance policy for any damage to his or her Lot. There is no guarantee that any insurance policy maintained by the Association pursuant to this Declaration will cover any damage to a Lot, and each Owner should presume that there will be no such coverage.

c. Nothing contained in this Section 4.5 shall be construed to limit the ability of an Owner to recover from any other Person (Owner, Resident, Guest, or otherwise) costs incurred by such Owner in the repair and restoration of damage to the Owner's Lot caused by and/or the responsibility of such Person.

d. Each Owner and Resident shall be responsible, at his or her sole cost, to repair, restore, and replace any personal property located within the Owner's or Resident's Lot or Exclusive Use Common Area that is damaged, no matter the cause or source of such damage. Under no circumstance shall the Association have any liability for damage to any Owner's or Resident's personal property.

4.6 Owner Liability for Damage to Common Area. Each Owner is liable to the Association for any damage to the Common Area caused by (i) his or her negligence, acts, willful misconduct, or omissions, (ii) the negligence, acts, willful misconduct, or omissions of Residents of and Guests to his or her Lot, and (iii) any condition originating on his or her Lot; in the case of joint ownership of a Lot, the liability of the co-Owners shall be joint and several. The costs and expenses incurred by the Association to correct or repair such damage shall be levied against the Owner(s) as a Reimbursement Assessment.

4.7 Owner Liability for Damage to Other Lots. Each Owner is liable to all other Owners for any damage to their Lots caused by (i) the Owner's negligence, acts, willful misconduct, or omissions, (ii) the negligence, acts, willful misconduct, or omissions of Residents of and Guests to the Owner's Lot, and (iii) any condition originating on the Owner's Lot; in the case of joint ownership of a Lot, the liability of the co-Owners shall be joint and several.

4.8 Pest Eradication. The Association shall be responsible for the prevention and eradication of infestation by pests and organisms (collectively, “Pests”) in the Common Area. Each Owner shall be responsible for the prevention and eradication of infestation by Pests within his or her Lot. For purposes of this Section 4.8, the term Pests includes, without limitation, wood-destroying pests and organisms, insects, rodents, and parasites.

4.9. Temporary Relocation Costs. The costs of temporary relocation of an Owner or Resident during the repair and/or maintenance of (1) any portion of the Common Area or other areas of the Development within the responsibility of the Association, by the Association, or (2) any portion of a Lot due to damage to the Lot, from any cause or source, shall be borne solely by the Owner and Residents of the Lot affected. The Association shall have no responsibility for any lodging, food, transportation, parking, loss of use, or other costs or expenses incurred by an Owner or Resident related to such temporary relocation.

ARTICLE 5 **ASSESSMENTS**

The purpose of Assessments is to fund the operations and management of the Association so that it may perform those rights and duties which are prescribed in the Governing Documents. Assessments shall be calculated, levied, and collected by the Association in the manner described below in this Article 5. The Association shall levy Regular Assessments and Special Assessments sufficient to perform its obligations under the Governing Documents and the Davis-Stirling Act. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

Each Owner shall pay to the Association all Assessments and other charges established and levied by the Association pursuant to this Declaration. Assessments and any late charges, reasonable fees and costs of collection, if any, and interest, if any, assessed in accordance with the provisions of this Declaration shall be a debt of the Owner of the Lot at the time the Assessment or other sums are levied. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Area and/or abandonment of the Owner’s Lot.

5.1 Budget. The Association shall prepare each year an Annual Budget Report which shall include those items specified in the Davis-Stirling Act. A copy of the Annual Budget Report shall be distributed annually to the Owners not less than thirty (30) days nor more than ninety (90) days before the beginning of the Association’s fiscal year.

5.2 Regular Assessments. Regular Assessments shall be levied by the Board each year to pay the anticipated operating expenses reflected in the Annual Budget Report noted in Section 5.1 above. Regular Assessments are to be levied and collected for: (1) the actual and estimated costs of, and reserves for, maintaining, managing, and operating the Common Area; (2) the costs and fees attributable to managing and administering the Association; and (3) all other costs and expenses incurred by the Association for the common benefit of the Development and the Owners, as may be required or allowed under the Governing Documents or law.

a. **Limitation.** Annual increases in Regular Assessments for any fiscal year shall not be imposed unless the Board has complied with the requirements of the Davis-Stirling Act regarding the distribution of the Annual Budget Report with respect to that fiscal year, or has obtained the approval of a majority of a quorum of the Members at a Member meeting or election to increase Regular Assessments. For the purposes of this subsection (a), and notwithstanding any contrary provision in the Governing Documents, “quorum” shall be more than fifty percent (50%) of the Members.

b. **Assessment Schedule.** All Regular Assessments shall be divided among and paid by the Owners in equal shares.

c. **Payable Quarterly.** The Regular Assessments shall be payable by all Owners in four (4) equal quarterly installments. Each such payment shall be due on the date designated by the Board, however, that date shall be no less than thirty (30) days after the notice of Regular Assessment is given. Each Regular Assessment payment shall automatically be deemed delinquent if not received by the Association within fifteen (15) days of the due date thereof. No portion of any Assessment paid by a Member shall be refundable.

d. **Written Notice.** Any increase in Regular Assessments shall be made by written notice to each Owner not less than thirty (30) nor more than sixty (60) days in advance of the first payment due and shall be payable in the manner specified in said notice. The failure of the Board to fix Regular Assessments prior to the commencement of any fiscal year shall not be deemed a waiver or modification of any provision of this Declaration or a release of any Owner from the obligation to pay Regular Assessments, and the Regular Assessments for such fiscal year shall continue in the same amount and at the same rate as in the immediately previous fiscal year.

5.3 Special Assessments. In addition to the Regular Assessments, the Board of Directors may levy during any fiscal year Special Assessments to supplement the Regular Assessments and defray the Association’s Common Expenses for such fiscal year.

a. **Limitation.** The Board may not impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the then current fiscal year, without the approval of a majority of a quorum of the Members. For the purposes of this subsection (a), and notwithstanding any contrary provision in the Governing Documents, “quorum” shall be more than fifty percent (50%) of the Members. Notwithstanding the foregoing, a Special Assessment for emergency situations shall not be subject to that limitation, and may be made in accordance with Section 5.5 herein.

b. **Assessment Schedule.** The total of any such Special Assessment shall be fixed in equal amounts for each Lot.

c. **Payment Schedule.** The Special Assessment shall be payable by each Owner against whom assessed as directed by the Board or as approved by the vote of the Owners.

d. **Written Notice.** A Special Assessment against all Owners shall be made by written notice to each Owner not less than thirty (30) nor more than sixty (60) days in advance of the first payment due and shall be payable in the manner specified in said notice.

5.4 Reimbursement Assessments. The Board may levy against any individual Owner a Reimbursement Assessment for the following purposes:

a. **Owner Damage.** Reimbursement for expenses incurred by the Association for damage caused to the Common Area by the Owner or Residents of or Guests to his or her Lot.

b. **Lot Repairs.** Reimbursement of expenses incurred by the Association for repairs made to Owner's Lot as permitted under this Declaration.

c. **Noncompliance.** Reimbursement of all costs and expenses, including attorneys' fees, incurred in bringing an Owner into compliance with the terms of the Governing Documents, whether or not a lawsuit is filed.

d. **Insurance Cost Increases.** Reimbursement of an increase in the insurance premiums for any insurance policy purchased or obtained by the Association for the benefit of the Development and the Owners due to the negligence, willful acts, or omissions of the Owner, a Resident of the Owner's Lot, or a Guest of either.

e. **Written Notice.** A Reimbursement Assessment under this section shall be made by written notice to such Owner who shall have thirty (30) days, or longer as may be determined by the Board, to pay the Reimbursement Assessment.

5.5 Emergency Assessments. Notwithstanding any other provision of this Article 5, the Board may levy Special Assessments without regard to the five percent (5%) limitation of Section 5.3 and without Owner approval in emergency situations. An emergency situation is any one of the following:

a. **Order of Court.** An expense required by an order of a court of competent jurisdiction.

b. **Threat to Personal Safety.** An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety on the Development is discovered.

c. **Unforeseen Expenses.** An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible which could not have been reasonably foreseen by the Board of Directors in preparing and distributing the Annual Budget Report. However, prior to the imposition or collection of an Assessment under this subsection, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of the Assessment imposed pursuant to this subsection.

5.6 Payment of Assessments. Assessments shall be paid by such method or methods as may be established by the Board.

a. **Application of Payments.** Any Assessment payments made by an Owner 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 costs of collection, attorney's fees, late charges, and/or interest. Notwithstanding the foregoing, unless otherwise limited by law, the terms of a payment plan entered into between an Owner and the Association may provide for a different application of payments.

b. **Payment Receipt.** When an Owner makes an Assessment payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

c. **Overnight Payments.** The Association shall provide a mailing address for overnight payment of Assessments. The address shall be provided in the Annual Policy Statement.

d. **Payment Disputes.** If a dispute exists between an Owner and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, the Owner may, in addition to pursuing dispute resolution pursuant to applicable provisions of the Davis-Stirling Act, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any. The foregoing right of an Owner shall not impede the Association's ability to collect delinquent Assessments as provided in this Declaration.

e. **No Offset.** All Assessments shall be payable in the amount specified and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents or a claim that the Association owes money, for any reason, to the Owner.

5.7 Deposit of Assessments. All sums received by the Association from Assessments, together with any interest or late fees attributable thereto, shall be promptly deposited into a checking or savings account (or accounts) in a bank or savings and loan association selected by the Board of Directors, which account shall be clearly designated in the Association's name as the "Operating Account" of the Association.

a. **Exclusive Control.** The Board shall have exclusive control of the account and is responsible to the Owners for the maintenance of accurate records thereof. All checks written in the name of the Association shall be signed as specified in the Bylaws.

b. **Commingling.** The Association shall maintain separate accounts for its Operating funds and its Reserves, and no funds from those separate accounts shall be commingled at any time.

c. **Interest.** No Owner shall have the right to receive interest on any such funds deposited.

5.8 Reserves. All sums collected by the Association which are budgeted to fund Reserves for anticipated long-term maintenance, repair and replacement of major components of the Common Area that the Association is obligated to maintain pursuant to this Declaration shall be subject to the following requirements.

a. **Segregated.** Be received in trust by the Board, set aside and segregated from and not commingled with the Association's Operating Account.

b. **Invested.** Be invested with prudence and in accordance with fiduciary obligations owed to the Association in accounts or other instruments which are FDIC insured or backed by the full faith and credit of the United States government.

c. **Interest.** No Owner shall have the right to receive interest on any such funds deposited.

d. **Restricted Use.** Be used for the sole purposes described in the Davis-Stirling Act.

e. **Two Signatures.** Be withdrawn from the Reserve account only upon the signature of two (2) members of the Board of Directors.

f. **Temporary Transfers.** The Board may authorize the temporary transfer of money from a Reserve fund to the general Operating Account to meet short term cash flow requirements or other expenses, provided there is compliance with the provisions of the Davis-Stirling Act.

g. **No Reimbursement.** All contributions to Reserves inure to the benefit of the Association and not to the benefit of any Member or individual. As such, contributions to Reserves are not refundable to individual Owners when such Owners cease to be Members of the Association.

5.9 Delinquencies. Assessments levied pursuant to the Governing Documents shall be delinquent fifteen (15) days after they become due. In the event an Owner defaults in the payment of an Assessment, the following consequences shall or may occur:

a. **Costs of Collection.** The Association may recover all of the reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees.

b. **Late Charge.** Delinquent Assessments shall be assessed a late charge of ten percent (10%) or Ten Dollars (\$10.00), whichever is greater.

c. **Interest.** Delinquent Assessments and all late charges and costs of collection shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate otherwise permitted by law. Interest shall commence thirty (30) days after the Assessment becomes due.

d. **Acceleration.** At the Board's election the total annual Regular Assessment due to be paid by the delinquent Owner during that fiscal year may be accelerated, in which case the total annual Regular Assessment will be due and payable immediately by that Owner.

5.10 Liability for Assessments. Each Owner shall be personally liable for any Assessments levied against the Owner under this Declaration together with any late charges, interest, costs and attorneys' fees as may be authorized. In a conveyance of a Lot by an Owner, the grantee shall be jointly and severally liable with the grantor for any delinquencies.

5.11 Enforcement of Delinquent Assessments. Delinquent Assessments may be enforced by the Association by any means available under California law which shall include without limitation those remedies described in the Davis-Stirling Act. The Owner who is delinquent shall be liable to the Association for all costs of enforcement and collection including late charges, interest and reasonable attorneys' fees.

5.12 Waiver of Use. No Owner of a Lot may exempt himself or herself from liability for Assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

5.13 Waiver of Homestead. With respect to liens created pursuant to this Article, each Owner waives to the fullest extent permitted by law the benefit of any homestead or exemption or redemption laws of the State of California. Each Owner shall be estopped to raise homestead or any other exemption or redemption in any action or proceeding to enforce or foreclose such liens.

5.14 Taxes and Utilities. Each Owner shall be obligated to pay the taxes and assessments assessed by the city, county, and/or other municipal authority against the Owner's Lot, interest in the Common Area, and/or personal property. Each Owner shall also be obligated to pay any and all assessments and charges for water, sewage, gas, electricity, and other utilities assessed or charged individually against such Owner's Lot.

5.15 Payment Plans for Delinquent Assessments. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to the Davis-Stirling Act. The Association shall provide the Owner the standards for payment plans, if any exists.

a. The Board shall meet with the Owner in executive session within forty five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more Directors to meet with the Owner.

b. Payment plans may incorporate any Assessments that accrue during the payment plan period. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan.

c. Payment plans shall not impede the Association's ability to record a lien on the Owner's Lot to secure payment of delinquent Assessments.

d. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

5.16 Assignment of Rents When Assessments Become Delinquent. Each Owner who is leasing or renting his or her Lot to a tenant or tenants hereby assigns to the Association all of the rents and any other income now due or which may become due to Owner pursuant to the Lease for the Owner's Lot (the "Rents"), together with any and all rights and remedies which the Owner may have against the tenant or tenants, or others in possession of the Lot, for the collection or recovery of the Rents so assigned. Such assignment shall be effective only upon the Owner's failure to pay any Assessment within thirty (30) days after the due date, and under no other circumstances, if the Association accepts such assignment.

a. ***Process to Effectuate Assignment of Rents.*** An assignment of rents pursuant to this Section 5.16 shall only be effective if it complies with the requirements of Section 2938 of the Civil Code and any other applicable law. Any costs incurred by the Association in effectuating an assignment of rents pursuant to this Section 5.16 shall be considered a cost of collection of delinquent Assessments, for which the applicable Owner shall be responsible.

b. ***Association Not a Landlord.*** The exercise and enforcement of the Association's rights under this Section 5.16 shall in no way constitute the Association as a landlord or lessee under any Lease, and the Association shall have no such responsibility. Each Owner hereby agrees to indemnify, defend, and hold harmless the Association and its Directors, officers, agents, representatives, employees, and attorneys, as may be applicable, from and against any and all claims by a tenant or any third party that the Association failed to fulfill the duties of landlord or lessee under any Lease for the Owner's Lot.

c. ***Payment of Rents to Association.*** Each Owner irrevocably consents that the tenant or tenants under a Lease for the Owner's Lot, upon receiving from the Association notice of an assignment of rents pursuant to this Section 5.16, shall pay the Rents to the Association without incurring any liability for the failure to determine the actual existence of any Assessment delinquency claimed by the Association. Each Owner further agrees that such tenant or tenants shall not be liable to the Owner for nonpayment of the Rents to the Owner for Rents paid to the Association pursuant to this Section 5.16. The full amount of the Rents received by the Association shall be applied to the Owner's account; however, application of the Rents to particular Assessments and charges owed by the Owner to the Association shall be at the Association's discretion to the extent not dictated by law.

d. **Association Powers Upon Default.** The Association may at any time pursue legal action against an Owner and/or the Owner's tenant or tenants for, or otherwise seek collection of, any Rents not paid to the Association pursuant to this Section 5.16. The Association shall deduct from the Rents received in any such action the costs and expenses of collection, including, but not limited to, reasonable attorney's fees.

e. **Termination of Payment of Rents to Association.** The Association may continue receiving Rents assigned directly from the tenant or tenants of an Owner's Lot until any foreclosure action against the subject Lot is completed by the Association or a first mortgagee or until the amount of money owed to the Association by the Owner, including Assessments, late charges, interest, and collection costs, including reasonable attorney's fees, is paid in full, whichever occurs first.

f. **Mortgage Holder Rights.** The assignment of rents and powers described in this Section 5.16 shall not affect, and shall in all respects be subordinate to, the execution of the rights and powers of any first mortgagee to do the same or similar acts.

ARTICLE 6

ASSESSMENT LIENS

As described elsewhere in the Declaration, the Association has a duty to collect Assessments from each Owner according to the procedures described in the Governing Documents. When an Owner fails or refuses to pay his or her Assessments, the Association may exercise the powers described below in this Article 6, other provisions of this Declaration, and applicable California law in order to collect the delinquent sums.

6.1 Enforcement of Assessments. The Association may collect delinquent Assessments by: (i) suing the Owner on the debt, or (ii) recording a lien against the Owner's Lot and foreclosing the lien through judicial or nonjudicial proceedings. The filing of a suit and obtaining judgment thereon does not waive the Association's right to record a lien against the Lot for the Owner's delinquent Assessment(s).

Prior to recording a lien upon the Lot of an Owner of record to collect a debt to the Association that is past due, the Association shall comply with the requirements of the Davis-Stirling Act and the Governing Documents. For liens recorded on or after January 1, 2006, 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 Association; the Board shall approve the decision to record a lien by a majority vote of the directors in an open meeting, and the Board shall record the vote in the minutes of that meeting.

6.2 Assessment Becomes Lien. A delinquent Assessment, together with the related late charges, interest, costs, and attorneys' fees shall become a lien on the Lot upon the recordation of a "Notice of Delinquent Assessment" in the Office of the County Recorder. The Notice of Delinquent Assessment shall be recorded in compliance with the Davis-Stirling Act. A lien created pursuant to this Section 6.2 shall be prior to all other liens recorded subsequent to the

Notice of Delinquent Assessment, except as may otherwise be provided under this Declaration with respect to the subordination thereof to any other liens and encumbrances.

6.3 Foreclosure. If the Association elects to enforce a delinquent assessment by foreclosure on a lien, as described in Section 6.1 above, it shall proceed with the foreclosure in the manner provided in the Davis-Stirling Act or other applicable California law.

6.4 Priority of Assessment Liens.

a. The Association's lien for Assessments provided by this Declaration shall be prior and superior to: (1) any declaration of homestead recorded after the recordation of this Declaration; (2) any other liens, except (A) taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (B) the lien or charge of any Mortgagee for a Mortgage made in good faith and value that encumbers a Lot and which was recorded before the date on which a Notice of Delinquent Assessment was recorded against the same Lot by the Association.

b. Neither the sale nor transfer of a Lot shall affect an Assessment lien, except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure by a first mortgagee extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments thereafter becoming due. No Person who obtains title to a Lot pursuant to judicial or nonjudicial foreclosure by a first mortgagee shall be liable for the share of Assessments chargeable to such Lot which became due before the acquisition of title to the Lot by such Person; such unpaid Assessments shall be a common expense collectible from all Owners, including, but not limited to, such Person.

c. No sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure by a first mortgagee, or otherwise, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent Assessments and charges which accrued during such Owner's period of ownership. The personal obligation of any prior Owner for payment of delinquent Assessments and charges may only be satisfied and therefore discharged by payment of said amounts, whether or not such Owner remains in possession of that Lot.

6.5 Additional Remedies. The remedies specified in this Article shall be in addition to any other rights and remedies which the Association may have under California law or the Governing Documents.

ARTICLE 7
BUDGETS, RESERVES AND ANNUAL DISCLOSURE STATEMENTS

7.1 Selected Financial Review Duties. In addition to those powers and duties set forth by law or the Governing Documents, the Board of Directors has the specific following powers and duties related to the review of the Association's financial records:

a. The power and duty to review, on at least a quarterly basis: (1) a current reconciliation of the Association's operating accounts; (2) a current reconciliation of the Association's Reserve Accounts; (3) the current year's actual reserve revenues and expenses compared to the current year's budget; (4) the latest account statements prepared by the financial institutions where the Association has its operating and Reserve Accounts; and (5) an income and expense statement for the Association's operating accounts and Reserve Accounts.

b. The power and duty to review the study of the Reserve Account requirements of the Development, or cause it to be reviewed, annually, and consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review.

c. The power and duty to cause a review of the financial statement of the Association to be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000), a copy of which shall be distributed to the Members within one hundred twenty (120) days after the close of such fiscal year.

7.2 Annual Budget Report. The Association, through the Board, shall distribute to all Members an Annual Budget Report thirty (30) to ninety (90) days before the end of each fiscal year, as follows:

a. The Annual Budget Report shall include, at a minimum, the following information, as well as any other information required by the Davis-Stirling Act:

(1) A pro forma operating budget, showing the estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves, prepared pursuant to the Davis-Stirling Act.

(3) A summary of the reserve funding plan adopted by the Board, as specified in the Davis-Stirling Act. The summary shall include notice to the Members that the full reserve study plan is available upon request, and the 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 thirty (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 the Davis-Stirling Act, 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. If so, the statement shall also set out the estimated amount, commencement date, and duration of the Special 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 Association assets, deferral of selected replacements or repairs, or alternative mechanisms.

(7) A general statement addressing the procedures used for the calculation and establishment of the reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain. The statement shall include, but need not be limited to, reserve calculations made using the formula described in the Davis-Stirling Act, and may not assume a rate of return on cash reserves in excess of two percent (2%) 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 Association has any outstanding loans with an original term of more than one (1) year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(9) A summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies, as applicable. For each policy, the summary shall include: (i) the name of the insurer; (ii) the type of insurance; (iii) the policy limit; and (iv) the amount of the deductible, if any. To the extent that any of the required information is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it with the Annual Budget Report. The summary distributed pursuant to this paragraph shall contain, in at least 10-point boldface type, the insurance policy summary statement required under the Davis-Stirling Act.

b. The Annual Budget Report shall be made available to the Members in accordance with the delivery requirements set forth in the Davis-Stirling Act.

c. The Association shall deliver either: (1) the full Annual Budget Report; or (2) a summary of the Annual Budget Report. If a summary of the Annual Budget Report is provided by the Association, that summary shall include a general description of the content of the Annual Budget Report, and instructions on how to request a complete copy of the Annual Budget Report at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary. Notwithstanding the foregoing, if a Member has requested to receive the Annual Budget Report in full, the Association shall deliver the full report to the Member, rather than a summary of the Annual Budget Report.

d. The "Assessment and Reserve Funding Disclosure Summary" form, prepared pursuant to the Davis-Stirling Act, shall accompany each Annual Budget Report or summary of the Annual Budget Report that is delivered pursuant to this Section.

7.3 Annual Policy Statement. Within thirty (30) to ninety (90) days before the end of each fiscal year, the Board shall distribute an Annual Policy Statement that provides the Members with information about Association policies, as follows:

- a. The Annual Policy Statement shall include all of the following information:
 - (1) The name and address of the person designated to receive official communications to the Association.
 - (2) A statement explaining that a Member may submit a request to have notices sent to up to two (2) different specified addresses.
 - (3) The location, if any, designated for posting of a General Notice.
 - (4) Notice of a Member's option to receive General Notices by Individual Delivery.
 - (5) Notice of a Member's right to receive copies of Board meeting minutes and of how and where to do so.
 - (6) The statement of Assessment collection policies required by the Davis-Stirling Act.
 - (7) A statement describing the 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 Association's discipline policy, if any, including any schedule of penalties for violations of the Governing Documents, pursuant to the Davis-Stirling Act.
 - (9) A summary of dispute resolution procedures, pursuant to the Davis-Stirling Act.
 - (10) A summary of any requirements for Association approval of a physical change to the Property, pursuant to the Davis-Stirling Act.
 - (11) The mailing address for overnight payment of Assessments, pursuant to the Davis-Stirling Act.
 - (12) Any other information that is required by law or the Governing Documents or that the Board determines to be appropriate for inclusion.
- b. The Annual Policy Statement shall be made available to the Members in accordance with the delivery requirements set forth in the Davis-Stirling Act.

c. The Association shall deliver either: (1) the full Annual Policy Statement; or (2) a summary of the Annual Policy Statement. If a summary of the Annual Policy Statement is provided by the Association, that summary shall include a general description of the content of the Annual Policy Statement, and instructions on how to request a complete copy of the Annual Policy Statement at no cost to the Member shall be printed in at least 10-point boldface type on the first page of the summary. Notwithstanding the foregoing, if a Member has requested to receive the Annual Policy Statement in full, the Association shall deliver the full report to the Member, rather than a summary of the Annual Policy Statement.

ARTICLE 8

ARCHITECTURAL CONTROL

It is the Association's duty to exercise architectural and landscaping control over all Improvements constructed or installed in the Development. In order to meet this duty the Association shall act in accordance with the following regulations as well as those contained in the Rules.

8.1 Right to Decorate. Each Owner shall have the exclusive right at his or her sole expense to paint, repaint, tile, wax, paper or otherwise furnish and decorate the interior of his or her Home.

8.2 Architectural Committee. The Board may itself operate as an Architectural Committee ("Committee") or it shall appoint a Committee comprised of three (3) Members, at least one of whom shall be a current director. The Committee may consult as needed with an independent professional such as a licensed architect, contractor, or engineer. All requests for the Association to approve any work, remodeling or improvements as required in this Article, or elsewhere in this Declaration, shall be submitted in writing to the Committee.

8.3 Prior Approval. The following work may not be commenced without the prior written approval of the Committee:

a. Any repair, alteration, installation, improvement, construction or remodeling of the exterior of a Home or Lot that is Visible.

b. Any landscaping that is Visible, except as specified in Section 8.4 below.

c. Anything done, built, installed or erected which might impact or alter any of the following in either the Common Area or on another Lot: (i) plumbing or electrical equipment, installations and devices; (ii) resistance to flooding and water intrusion, including Drainage Courses or any other drainage; (iii) landscaping, and hardscape that is Visible; (iv) the brush clearance areas; (v) the foundation or structural integrity; (vi) the geological integrity of any slopes; (vii) the right to quiet enjoyment of any other Owner; or (viii) the right of any other Owner to the full ownership, occupancy, and use of his or her Lot.

8.4 Exceptions. Notwithstanding Section 8.3, it is unnecessary for an Owner to apply for approval of an alteration under this section if he or she is merely (i) repainting a Home or structure in the Yard a color that is identical to the previous color or a color that is pre-approved in the Rules, (ii) replacing flowers or shrubs which have died with the same or similar type of flowers and shrubs, or (iii) adding additional drainage in the Yard which does not remove, disable or change the flow of current drainage. Further, the Board may specify in the Rules other types of work which may be performed without seeking approval under Section 8.3.

8.5 Procedure for Submitting Application. The Owner must submit detailed plans, specifications, reports, samples, and such other supporting documentation and information as is requested by the Committee. Detailed procedures for submitting an application for approval under Section 8.3 above will be contained in the Rules.

8.6 Decisions by the Committee. All decisions by the Committee shall be made expeditiously and in no event more than sixty (60) days after the Committee has received all of the information and documentation requested in order to fully evaluate the application. Any disapproval shall be communicated to the Owner in writing and shall specify the reason(s) for the disapproval. In making a decision, the Committee may properly consider (i) its subjective belief that the plans are or are not consistent with the general design, construction, appearance, and harmony of other improvements in the Development, (ii) precedents, or lack thereof, for the work the Owner wishes to perform, (iii) compliance with the standards contained in the Governing Documents, and (iv) the impact of the alteration on the property values, quiet enjoyment, and full use of other Lots in the Development.

In the event the Committee fails to approve or disapprove plans and specifications for a proposed improvement within sixty (60) days after the plans and specifications have been submitted to it, the plans and specifications shall be deemed to be disapproved; provided, however, those plans and specifications shall be subject to reconsideration as provided in this Article 8. Notwithstanding the foregoing, if an application for the installation and use of an electric vehicle charging station or a solar energy system is not denied in writing within sixty (60) days from the date of receipt of the application by the Committee, the application shall be deemed approved, unless that delay is the result of a reasonable request by the Committee for additional information from the Owner. The affirmative vote of a majority of the members of the Committee shall be required for the approval or disapproval of a proposed improvement.

The Committee may condition its approval of an application for any proposed improvement on any one or more of the following: (1) the applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Common Area or another Owner's Lot as a result of such work; (2) such changes to the application as the Committee deems appropriate; (3) the applicant's agreement to install water, gas, electrical, or other utility meters to measure any increased utility consumption; (4) the applicant's agreement to reimburse the Association for the cost of maintaining the improvement (should the Association agree to accept maintenance responsibility for the improvement as built); (5) the applicant's agreement to complete the proposed work within a stated period of time; and/or (6) the applicant depositing with the Association a refundable security deposit in an amount the Committee determines to be

appropriate to cover the cost of repairing or restoring damage to the Common Area that is reasonably foreseeable.

8.7 No Liability for Approval. By approving an application the Committee and the Association are not representing to the Owner that his or her plans accurately depict conditions in the field or that what he or she plans to build is prudent, safe, or legal. The Committee's approval shall not: (i) relieve the Owner of the duty to satisfy the terms of the Governing Documents and of all applicable laws, statutes, regulations, and codes; (ii) provide a defense to a legal action by the Association; or (iii) give rise to any liability on the part of the Association, the Board, the Committee, or their representatives.

8.8 Compliance With Laws. It is the Owner, and not the Association, who must ensure that the final product meets all applicable laws and regulations, is free of defects, meets all provisions of the Governing Documents, and does not disturb the quiet enjoyment of any other Owner. The installation, erection, planting and maintenance of any improvement approved by the Committee must be performed by a contractor that (A) is licensed with the California Contractors State License Board, as may be required by the State of California for the type and dollar amount of work the contractor has been engaged to perform, and (B) maintains workers compensation insurance with limits no less than those required of the contractor by the State of California; proof of a contractor's license status and worker's compensation insurance coverage shall be provided by the Owner to the Association upon the Architectural Review Committee's request.

8.9 Conduct of Construction. During any construction, each Owner shall use his or her best efforts to minimize inconvenience to other Residents of the Development. To accomplish this goal, the following restrictions will apply in addition to any others contained in the Rules:

a. Construction activities shall be limited to those hours allowed under city codes unless the Board adopts specific hours in the Rules, in which case the provisions in the Rules shall apply. No work may take place on Sundays or national holidays.

b. Under no circumstances may any construction project last longer than one year, and in a given instance the Board may shorten this period of time in the Rules or in the approval for the work.

8.10 Notice of Completion. For any project that requires approval and for which approval was given under Sections 8.3 to 8.6 above, the Owner shall deliver a written Notice of Completion to the Association together with a set of as-built plans when the project is finished. The notice shall specify that the work is fully completed, was completed in strict accordance with the plans approved by the Association, and the date of completion.

8.11 Views. There are no protected views in the Development, and no Lot (including any portion of a Home) is assured the existence or unobstructed continuation of any particular view. Any construction, the growth of landscaping, or other installation of Improvements by the Association, Owner or the owners of other property in the vicinity of the Development may

impair the view from any Lot, and each Owner shall be deemed to have consented to any such view impairment. Notwithstanding the foregoing, when an application is submitted to the Committee, it may take into consideration the extent to which the proposed alteration will impact a neighbor's view; however, there is no duty to preserve that view. A decision by the Committee whether to approve or disapprove the alteration despite its impact on an existing view shall be final and binding.

8.12 Size of Homes. No Home may be constructed in the Development with a total ground floor area that is less than 1700 square feet, exclusive of garages, porches, patios, exterior stairways, landings, and any other detached structures.

8.13 Landscaping and Drainage. No landscaping may be installed by any Owner which could impede or render more costly the Association's access to any area to perform any of its maintenance responsibilities under this Declaration, without the prior written approval of the Committee. No drainage pattern, pipes or channels in the Common Area may be obstructed, blocked, or altered at any time by any Owner or his Residents and Guests.

8.14 Mechanic's Liens. Each Owner shall indemnify, defend, and hold harmless the Association, and its officers, directors, employees, committee members, Manager, and agents, from and against any damage, loss, attorneys' fees, costs, claims, or injuries caused in whole or in part by the recordation of a mechanic's lien against any part of the Development or another Owner's Lot. In the event a mechanic's lien is filed which affects in any way the Common Area or another Owner's Lot, the Owner shall promptly take all steps needed to cause the removal of the mechanic's lien or have a mechanic's lien release bond placed on the property.

8.15 Record Keeping. The Committee shall prepare and retain a written record of all applications made for its approval under this Declaration together with the decisions it made and actions it took in response to such applications.

8.16 Appeals. If the Committee is comprised of less than the entire Board, any Owner who wishes to appeal the disapproval of the Committee may do so under Davis-Stirling Act by submitting a request, in writing, to the Board in care of the Manager which request must be received not later than fifteen (15) days after written notice of disapproval was given. If such an appeal is requested it will be considered by the Board at a hearing which is open to the membership. The Board may adopt procedures for the conduct of any such appeal in the Rules. In the event an appeal is timely submitted the Board shall issue a written decision within fifteen (15) days following the date of the hearing and its decision will be final and binding.

8.17 Adoption of Rules. Pursuant to the Davis-Stirling Act, the Board may adopt in the Rules (or in a separate document entitled Architectural and Landscaping Guidelines) further guidelines, procedures, and regulations pertaining to the exercise of architectural and design control within the Development.

8.18 Noncompliance. A Noncompliance shall be deemed to exist if an improvement that requires the approval of the Committee is: (1) commenced or completed without prior written approval by the Committee; (2) an improvement is not completed within the time limit

established by the Committee in its approval; (3) an improvement is not completed in substantial conformity with the approved plans and specifications; or (4) if no time limit is established by the Committee, the Owner fails to complete the work within one (1) year after the date on which the application was approved. In the event of a noncompliance, the Committee shall deliver a written notice of Noncompliance to the violating Owner. The Committee shall notify the Board in writing when an Owner fails to remedy any noncompliance within thirty (30) days after the date of the notice of the noncompliance. After notice and a disciplinary hearing before the Board, the Board shall determine whether there is a noncompliance, and, if so, the nature thereof and the estimated cost of correcting or removing same. If a noncompliance is determined to exist, the Owner shall remedy or remove the noncompliance within a period of not more than thirty (30) days from the date that notice of the Board ruling regarding the noncompliance is given to the Owner. If the Owner does not comply with the Board's ruling within that period, the Association may correct the noncompliance and levy a Reimbursement Assessment against the Owner for the costs incurred by the Association related to same, or commence an action for damages or injunctive relief, as appropriate, to remedy the noncompliance.

8.19 Variances. The Committee may authorize variances from compliance with any of the architectural and design control provisions of this Declaration, the Rules, or the other Governing Documents. Variances must be evidenced in writing and must be signed by a majority of the Board. If variances are granted, no violation of this Declaration shall be deemed to have occurred concerning the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of that Owner's Lot. Any costs incurred by the Association in relation to the granting of a variance shall be levied against the Owner as a Reimbursement Assessment. No variance shall conflict with local ordinances or any specific plan of development for the Property.

8.20 Exculpation of Committee. Each Owner is deemed to agree that neither the Committee, nor the Board, nor the members thereof, nor the Association shall be liable to any Person for: (1) any matter outside the scope of approval of the Committee; (2) any defect in any improvement constructed by or on behalf of the Owner pursuant to an approved application; (3) any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of an Owner pursuant to an approved application; or (4) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the duties of the Committee under this Article 8, unless due to the willful misconduct or gross negligence of such person. All Committee members shall be covered by the directors and officers liability insurance policy maintained by the Association.

ARTICLE 9

USE RESTRICTIONS

Owners shall comply with the following restrictions in connection with the use and occupancy of their Lots.

9.1 Antennas. No Owner shall install or maintain any mast, antenna or satellite dish of any size in the Common Area. Owners may install an antenna or satellite dish on their own Lot (not to exceed 36 inches in diameter) to receive television or radio reception as permitted by law, but shall comply with the Rules and obtain prior written approval from the Architectural Committee with regard to the precise location, future maintenance, and other legally permitted conditions relative to the installation or operation of the antenna or dish.

9.2 Alteration of Common Area. No Owner shall alter, construct or remove anything on or from the Common Area, without the prior written approval of the Board of Directors.

9.3 Alteration of Separate Interests. Prior to commencing any construction, alterations or improvements on a Lot which require approval by the Architectural Committee under Article 8 hereof, Owners shall comply with all requirements of the Governing Documents.

9.4 Barbecues; Exterior Fires. There shall be no exterior fires whatsoever except for barbecues, fire pits and fireplaces in confined receptacles located within an Owner's back Yard and which comply with all city and county regulations.

9.5 Drainage Courses. No Owner may alter or interfere with any established drainage patterns over his or her Lot or interfere with the natural flow of water from other parts of the Development including the Common Area or other Lots without the prior written approval of the Architectural Committee.

9.6 Drilling; Mining Operations. The use of any portion of the surface of the Development for drilling operations, mining or quarrying of any kind, including, but not limited to, oil well drilling, is prohibited.

9.7 Electrical Equipment. No Owner may install, attach or hang any equipment or wiring for electrical installation in any portion of the Common Area except as approved in writing in advance by the Architectural Committee. No approval shall be given if the installation is Visible.

9.8 Filming Activities. No Owner shall allow his Lot to be used for commercial filming or photography purposes except with the prior written approval of the Board or as otherwise allowed in the Rules.

9.9 Flammable Materials. Under no circumstances may explosives, fireworks or highly flammable materials be stored by Owners anywhere in the Development. Nothing contained in this paragraph shall prohibit Owners from keeping normal household products including cleaning and barbeque supplies, provided they are stored in a safe manner and comply with all local Fire Department requirements.

9.10 Garage Sales. No rummage sales, garage sales, estate sales, or flea markets of any kind shall be permitted unless allowed in the Rules or otherwise approved in writing in advance by the Board.

9.11 Increasing Insurance Rates. Nothing shall be done or kept by any Owner in the Development which will increase the rate of insurance for the Common Area or another Lot, or cause the cancellation of any insurance policy. If, by reason of any act or omission by an Owner, the cost of insurance on any policy normally purchased by the Association is increased, that Owner shall be personally liable to reimburse the Association for the cost of any such increase which cost shall become a Reimbursement Assessment against his or her Lot.

9.12 Insurance. Each Owner, and not the Association, shall have the continuing duty to insure his or her Lot and Home and purchase at his or her sole expense liability insurance, property insurance covering his or her Lot, automobile insurance, and any other policy of insurance which the Owner feels is reasonably necessary to protect his or her separate interests. Nothing in this Section 9.12 shall be construed to limit or affect the requirements under Article 11 of this Declaration.

9.13 Laundry. No laundry shall be dried or placed outside a Home on a Lot if it is Visible.

9.14 Leasing Restrictions.

a. **General.** The rental or leasing of any Lot shall be subject to the provisions of this Section 9.14. When the term “rent” is used in this Section 9.14, it shall be deemed to mean and include the rental and/or leasing of a Lot.

b. **Lease Waiting Period.** No Owner may rent his or her Lot during the one (1) year period immediately following the Owner’s purchase or assumption of title to the Lot (the “Lease Waiting Period”).

c. **Restriction on Number of Lots Leased.**

(1) No more than twenty percent (20%) of the Lots in the Development shall be rented at any time (the “Leasing Cap”).

(2) After the expiration of the Lease Waiting Period for an Owner’s Lot, an Owner desiring to rent his or her Lot may submit to the Board a written request for approval to rent. No Owner shall rent his or her Lot prior to receiving written approval from the Board.

(A) The Board shall respond to any Owner’s written request for approval to rent the Owner’s Lot within fifteen (15) days of the Board’s receipt of such request. If the Board does not respond to the Owner’s written request at the Owner’s last known address of record within this time period, permission to rent shall be deemed to have been approved by the Board.

(B) The Board shall deny an Owner’s request for approval to rent the Owner’s Lot if the number of rented Lots, plus the number of Lots for which other Owners have received Board approval to rent but which are not yet rented, plus the Owner’s Lot (the “Leased

Lot Calculation”) exceeds twenty percent (20%) of the Lots in the Development. If the Leased Lot Calculation does not exceed twenty percent (20%) of the Lots in the Development, the Board shall grant an Owner’s request for rental approval.

(C) In the event an Owner’s request for approval to rent is denied, the Owner shall be placed on a waiting list maintained by the Association, and the Owner shall be given an opportunity to rent his or her Lot when such Owner’s name is first on the waiting list and the Leased Lot Calculation no longer exceeds twenty percent (20%) of the Lots in the Development.

(D) If an Owner who has been approved to rent his or her Lot fails to rent his or her Lot within ninety (90) days of the date of rental approval, the Owner’s written approval to rent from the Board shall expire. In such event, the Owner shall be required to submit a new written request to rent his or her Lot in accordance with the foregoing provisions.

(E) If a Lease for an approved rental of an Owner’s Lot expires or terminates and the Owner does not enter into a new Lease for the Owner’s Lot within ninety (90) days of the expiration or termination of the prior Lease, the Owner’s written approval to rent shall expire. In such event, the Owner shall be required to submit a new written request to rent his or her Lot in accordance with the foregoing provisions.

(3) Prior to renting his or her Lot (after approval for rental has been given by the Association), the Owner shall provide the Association verification of the date the Owner acquired title to the Lot and the name and contact information of the prospective Tenant or the prospective Tenant’s representative.

d. ***Lease Requirements.***

(1) Subject to the Lease Waiting Period, the Leasing Cap, and the provisions of subsection (c) of this Section 9.14, an Owner may rent his or her Lot pursuant to a Lease that is: (A) in writing; (B) for a term of at least one (1) year (the “Minimum Lease Term”); and (C) subject in all respects to the Governing Documents, including, but not limited to, this Declaration. A copy of any fully executed Lease for a Lot shall be provided to the Association upon request by the Association.

(2) The Lease shall include a statement that any failure by the Tenant to comply with the Governing Documents will constitute a default under the Lease. The following paragraph, or a substantially similar paragraph, shall be included in each Lease:

In accepting this Lease, Tenant acknowledges that Tenant has received, read, and understands the Restated Declaration of Covenants, Conditions and Restrictions for Shadow Hills Estates Homeowners’ Association and the rules, regulations, and policies of Shadow Hills Estates Homeowners’ Association (the “Governing Documents”). Tenant agrees to comply with the terms of the Governing Documents, and acknowledges that any failure by Tenant, or Tenant’s family members, social guests, houseguests, servants, employees, or agents, to comply

with the terms of the Governing Documents shall constitute a default under this Lease and may result in the early termination of this Lease.

(3) No less than the entirety of a Lot may be rented under a Lease, or otherwise. Notwithstanding the foregoing, one (1) roommate paying rent to an Owner may reside simultaneously with an Owner in the Owner's Home.

(4) No sub-rental of a Lot shall be permitted, and no Lot may be used for vacation rentals or rented to a corporate housing company.

(5) Each Owner shall be responsible for any and all violations of the Governing Documents committed by any Tenant of the Owner's Lot. If any Tenant of a Lot violates the Governing Documents, the Association may bring an action in its own name and/or in the name of the Lot Owner to have the Tenant evicted and/or to recover damages; a court may find a Tenant guilty of unlawful detainer despite the fact that an Owner may not be the plaintiff in the action and/or the Tenant is not otherwise in violation of the Lease. If permitted by law, the Association may recover all costs, including, without limitation, attorneys' fees and costs, in prosecuting any unlawful detainer action against a Tenant of a Lot pursuant to the foregoing provisions. The remedies described in this subsection are not exclusive and are in addition to any other remedies available to the Association by law, in equity, and/or by the authority of the Governing Documents, including, but not limited to, this Declaration.

(6) Each Owner shall be deemed to have agreed to save, hold harmless, indemnify, and defend the Association and its directors, officers, agents, representatives, and employees from and against any and all claims, demands, actions, causes of action, liabilities, damages, and expenses arising out of, or incurred as a result of, the rental/leasing of the Owner's Lot, together with all costs, expenses, and attorneys' fees resulting therefrom.

e. ***Exemptions; Enforcement.***

(1) Upon application by an Owner to rent his or her Lot, the Board shall be authorized and empowered, in its sole and reasonable discretion, to grant a hardship exemption for the Owner with respect to the Lease Waiting Period, the Leasing Cap and/or the Minimum Lease Term. For purposes of this subsection, a "hardship" shall be defined as the need of an Owner to rent his or her Lot as a result of an unforeseeable event and/or because enforcement of the Lease Waiting Period, Leasing Cap, and/or Minimum Lease Term against the Owner could reasonably subject the Owner to suffer a severe financial difficulty.

(2) If an Owner rents his or her Lot without approval from the Board, or otherwise in violation of the provisions of this Section 9.14, the Owner shall be subject to disciplinary measures, including, but not limited to: (A) a monetary penalty in an amount to be determined by the Board; (B) other disciplinary measures; and/or (C) a Special Assessment in an amount equal to the costs incurred by the Association related to addressing such violation, including, without limitation, attorneys' fees and costs, irrespective of whether the Association is able to obtain a court order to evict the Tenant or otherwise effectuate the legal eviction of the non-compliant Tenant from the Owner's Lot.

(3) Notwithstanding anything to the contrary contained in this Section 9.14, neither the Lease Waiting Period nor the Leasing Cap shall apply to: (A) any Owner of record as of the recordation date of this Declaration; (B) any Owner exempted from the Lease Waiting Period and/or the Leasing Cap under the Davis-Stirling Act; and (C) the Association. Further, the Minimum Lease Term shall not apply to any Lease in effect as of the recordation date of this Declaration.

9.15. Marketing of Lots. The Association may not arbitrarily or unreasonably restrict an Owner's ability to market the Owner's Lot or Home. The Association may not adopt, enforce, or otherwise impose any Rule that does either of the following: (1) imposes an Assessment or fee in connection with the marketing of an Owner's Lot in an amount that exceeds the Association's actual or direct costs; or (2) establishes an exclusive relationship with a real estate broker through which the sale or marketing of Lots in the Development is required to occur. The limitation set forth in this Section 9.15 does not apply to the sale or marketing of Lots owned by the Association. For purposes of this Section, "market" and "marketing" mean listing, advertising, or obtaining or providing access to show an Owner's Lot. This Section does not apply to Rules made in accordance with Sections 712 or 713 of the Civil Code regarding "for sale" signs. The Owner shall indemnify, defend, and hold harmless the Association and its officers, directors, employees, committee members, Manager, and other Members from any loss, damage, injury, claim, liability, judgment, attorneys' fees or costs arising from all acts or omissions in connection with the effort to sell or lease the Lot or Home.

9.16 Nuisance. Noxious and offensive activities are prohibited in the Development. The Board is entitled to determine, in its sole and reasonable discretion, if any device, noise, odor, or activity constitutes a nuisance. Due to the subjective nature of certain alleged nuisances, the Board may, after investigation, decline to become involved in disputes between Owners over their conduct towards one another. In such event the dispute will be resolved by the Owners only and shall not involve the Association in any resulting litigation, arbitration, or mediation, or otherwise.

a. Devices that create or constitute a nuisance may not be kept or operated within the Development. Such devices include, without limitation, the following:

(1) Horns, whistles, bells and other sound devices that create or emit loud noises; provided, however, security devices/systems may be installed and used within a Home or a vehicle to protect the security of such Home or vehicle and its contents, so long as reasonable care is taken to prevent consistently false alarms of, and annoying and disturbing noise from, such devices/systems.

(2) Devices that create or emit loud noises or noxious odors (except equipment reasonably used by the Association in connection with its maintenance and repair responsibilities pursuant to this Declaration).

(3) Devices that unreasonably interfere with television or radio reception to another Lot.

(4) Mechanical equipment installed in any Lot or Exclusive Use Common Area, including, but not limited to, HVAC equipment, that is not insulated and installed so as to prevent unreasonable noise or vibration.

b. Activities that create or constitute a nuisance may not be undertaken or conducted within the Development. Such activities include, without limitation, the following:

(1) Hanging, drying, or airing clothing, fabrics, or unsightly articles that are Visible.

(2) The creation of unreasonable levels of noise from parties, recorded music, radios, television, or related devices.

(3) Any activity which is a serious annoyance or nuisance to any Owner or Resident, or which may in any way interfere with any Owner's or Resident's quiet enjoyment and peaceful possession of such Owner's or Resident's Lot or Exclusive Use Common Area.

(4) Any activity which may (i) increase the rate of insurance for the Association, the Common Area, or any Lot, (ii) result in cancellation of the insurance for the Association, the Common Area, or any Lot, (iii) obstruct or interfere with the rights of any Owners or Residents, (iv) violate any law or provision of this Declaration or the other Governing Documents, or (v) constitute a nuisance or other threat to the health, safety, or welfare of any Owners or Residents of the Development.

9.17 Obstruction of Common Areas. No Owner may obstruct or interfere in the Association's management of, or the right of other Owners to free access and travel through, the Common Areas.

9.18 Occupancy Restriction. The number of persons residing in a Home at any time shall comply with all city and county codes, regulations, and ordinances regarding the occupancy of residential dwellings, and may not exceed any occupancy limits established under such codes, regulations, or ordinances.

9.19 Vehicles and Parking.

a. No Owner or Resident shall park any automobile or other motor vehicle in any driveway or garage, except in a driveway or garage designated for the use of the Owner or Resident by the Governing Documents or a deed of conveyance (such as a grant deed). The parking of vehicles on streets within the Development shall be subject to Rules relating to same. All driveways and garages in the Development shall be used for the parking of operable motor vehicles designed as passenger vehicles only, provided that such vehicles do not exceed the dimensions of the Owner's or Resident's driveway or garage; no inoperable motor vehicles may be parked on streets within the Development. Each Owner and Resident shall keep his or her driveway and garage in a neat and clean condition, free of oil, grease, and other debris.

b. No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size pickup truck or sport utility vehicle), boat, or similar equipment, or recreational vehicle, shall be permitted to park or be stored anywhere within the Development, other than temporarily, unless placed or maintained in an area specifically designated for such purposes by the Board. Notwithstanding the foregoing, sedans or standard size pickup trucks that are used both for business and personal use may be parked within the Development, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive, as determined by the Board, and such vehicles do not contain any trade equipment or tools that are Visible.

c. No motor vehicles that are inoperable, unlicensed, noisy or smoky shall be maintained or operated within the Development. Further, no off-road vehicles shall be maintained or operated in the Development.

d. No Person shall construct, repair, service or maintain any motor vehicle within any portion of the Development, except for emergency repairs, to the extent necessary to remove the vehicle to a proper repair facility, or minor repairs requiring less than one (1) day's work.

e. No Person shall park, leave, or abandon any vehicle in a manner that impedes or prevents ready ingress, egress, or passage through the Development, or in a manner that impedes or prevents access to or from any parking space or garage within the Development. Notwithstanding the foregoing, the temporary parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods or services to the Association, Owners or Residents, and the parking of vehicles belonging to and being used by Owners, Residents, and their Guests for such loading and unloading purposes, shall be permitted.

f. Storing of personal property in a garage shall be permitted. Garages shall not be converted for living or recreational purposes.

g. The Board, in its discretion, may adopt reasonable Rules consistent with the provisions of this Section 9.19. The Association shall have the right and power to remove any vehicle within the Development parked in violation of this Declaration or the Rules, in accordance with the provisions of Section 22658 of the Vehicle Code.

9.20 Pets and Other Animals.

a. Pets and other animals may be kept within the Development, subject to the provisions of this Section and any reasonable Rules of the Association. This Section shall not be construed to affect any other rights provided by law to an Owner or Resident to keep a pet or other animal within the Development. For purposes of this Section, "pet" means any domesticated bird, cat, dog, or aquatic animal kept within an aquarium, and "other animals" means goats, horses, peacocks, chickens and similar animals. The Board may adopt Rules more clearly defining pets and other animals that are permitted within the Development.

b. The maximum number and types of pets and other animals that may be kept in, or brought into, a Lot at any one time shall comply with all local governmental codes, ordinances

and regulations regulating the number and types of pets and other animals that may be kept in a residential dwelling and/or on a residential lot at any one time.

c. Owners, Residents and their Guests shall be required to properly handle and control any pet being transported through the Common Area between a Lot and outside of the Development (and vice versa) or otherwise located within the Common Area. The presence in and use of the Common Area by pets and other animals shall be subject to any Rules relating to same adopted by the Board.

d. No Owner or Resident may raise or keep pets or other animals anywhere within the Development for commercial purposes. The ownership of all pets and other animals must comply with local governmental agency guidelines, including, but not limited to, pet registration and sanitation laws. No Owner or Resident may keep a pet or other animal within his or her Lot that interferes with, or has a reasonable likelihood of interfering with, the rights of any Owner or Resident to the peaceful and quiet enjoyment of his or her Lot; any pet or other animal in violation of this provision shall be deemed a nuisance, and such pet or other animal must be removed from the Development within a reasonable time after the Board determines, after a hearing duly noticed to the Owner of the Lot, that the pet creates an unreasonable annoyance or nuisance within the Development.

e. Neither the Association nor its Directors, officers, agents, representatives, or employees shall have any liability to any Owner, Resident, Guest, or other person for any injury to persons or damage to property caused by any pet or other animal kept in, or brought into, the Development by any Owner, Resident, or Guest. Each Owner shall be liable to all other Owners, all Residents, their Guests, and other persons for any unreasonable noise, injury to person, or damage to property caused by any pet or other animal kept in, or brought into, the Development by the Owner or a Resident of or Guest to the Owner's Lot.

f. Each Owner shall immediately remove and dispose of any litter, waste or other byproducts left by his or her pet or other animal anywhere in the Development, provided, however, the Association is responsible for removing waste left behind by horses in the Common Areas, including the trails.

9.21 Power Tools. Unless provided otherwise in the Rules, power tools, welding equipment, or other tools as listed in the Rules may be used only between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, and between 9:00 a.m. and 5:00 p.m. on weekends. Owners should be courteous and take reasonable measures so as not to unduly disturb their neighbors. In no event shall machinery or equipment of any kind be maintained or operated within the Development which is not customary and/or necessary in connection with the residential use of a Lot.

9.22 Residential Use. No Owner shall permit his or her Lot or any portion thereof to be occupied or used for any purpose other than a private single-family residence.

a. No portion of a Lot may be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile,

storing, vending, or other nonresidential purposes. The foregoing restriction on commercial use shall be subject to the home office use allowed under this Section 9.22.

b. A Home may be used for home office use, so long as such home office use is incidental to the residential use of the Home. The use of any portion of a Lot or Home as a home office shall comply with the following provisions: (1) the home office use is not apparent or detectable by sight, sound, or smell from outside of the Home; (2) the home office use complies with applicable laws and zoning ordinances; (3) no employees, clients, customers, patrons, messengers, or delivery personnel regularly visit the Home, Lot or any portion of the Development in relation to the home office use; (4) the home office use does not increase the liability or casualty insurance obligations or premiums of the Association; and (5) the home office use is consistent with the residential character of the Development and conforms with the provisions of the Governing Documents.

9.23 Sanitary Conditions. Each Owner shall maintain in clean and sanitary condition and in good repair the interior of his or her Lot.

9.24 Signs. Except as expressly allowed in the Rules or mandated by the Davis-Stirling Act and other applicable law, no signs, banners, notices, paintings or advertisements of any kind shall be displayed on any Lot.

9.25 Trails. Equestrian trails are for walking and riding of horses only. Except for vehicles used by the Association to maintain the trails, no vehicle of any kind (including without limitation bicycles, dirt bikes, all-terrain vehicles, and motorcycles) may be on any trail at any time or for any reason. The trails shall not be obstructed at any time.

9.26 Trash; Refuse. All Owners shall comply with federal, state and local laws with respect to the disposal of trash, refuse, and other rubbish. Owners shall place their trash in their own bins only. No debris or refuse of any kind may be dumped or deposited in swales, streets, Common Area, or another Owner's Lot. Trash bins may be placed in front of the Home where they are Visible for a period of thirty-six (36) hours only from noon the day before trash pickup to midnight the next day.

9.27 Trees. Owners shall keep their trees neatly trimmed and remove dead trees promptly.

9.28 Unsightly Items. All weeds, rubbish, debris or unsightly materials or objects of any kind shall be regularly removed by the Owners from Lots and shall not at any time be Visible.

9.29 Solar Energy Systems. The installation and use of solar energy systems within the Development shall be subject to the provisions of Section 714 of the Civil Code. No Owner shall have the right to install a solar energy system in the Common Area, except with the prior written approval of the Association. The Association may impose reasonable restrictions on the installation and use of solar energy systems on or in Lots; for purposes of this provision, reasonable restrictions are those restrictions that do not significantly increase the cost of the solar

energy system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

9.30 Water Conservation in Landscaping. The Association shall not prohibit, or establish conditions that have the effect of prohibiting, the use of low water-using plants as a group. Further, the Association shall not prohibit or restrict compliance with either of the following: a water-efficient landscape ordinance adopted or in effect pursuant to subdivision (c) of Section 65595 of the Government Code; or any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the Water Code. The foregoing provisions shall not prohibit the Association from applying landscaping Rules, to the extent the Rules fully conform with the foregoing provisions.

9.31 Pre-Existing Conditions. Conditions within any Lot or other portion of the Development are grandfathered and excepted from compliance with this Declaration if such conditions were in compliance with the Original Declaration as of the date of recordation of this Declaration and the then current Rules of the Association. Such grandfathered conditions must otherwise comply with the requirements of this Declaration. Nothing contained in this Section 9.31 shall be deemed or construed to be approval or acceptance by the Association of any condition (pre-existing or otherwise) which constitutes a violation of this Declaration, the Governing Documents, or any law. In any dispute over whether a condition which violates this Declaration was pre-existing and/or is grandfathered under this Section 9.31, the burden of proof will be on the Owner who is in violation of this Declaration. Conditions which violate this Declaration and are not grandfathered under this Section 9.31 shall be required to be corrected by the Owner in violation.

ARTICLE 10

ENFORCEMENT OF GOVERNING DOCUMENTS

The Association and all Owners are legally required to adhere to the provisions of the Governing Documents, which may be amended from time to time. In the event of noncompliance the following rights and procedures shall apply.

10.1 Standing to Enforce. Enforcement of the Governing Documents may be accomplished by the means described below in this Article 10 or by any proceeding at law or in equity against the Person who has committed or is attempting to commit a violation. The only Persons who shall have standing in any judicial proceeding to enforce the Governing Documents are:

a. ***The Association.*** The Board of Directors or any Person duly authorized by the Board of Directors, or

b. ***The Owners.*** Any Owner or group of Owners.

10.2 Discretion to Take Action. The Association is not obligated to impose sanctions or file a lawsuit for every infraction of the Governing Documents. What sanctions, if

any, to impose and whether to bring litigation are decisions left to the sound discretion of the Board. If, for example, the Board believes a dispute is isolated to two Owners, and does not materially impact other Owners/Residents or the Common Areas, the Board may decline to impose sanctions or take any other action and may leave resolution of the dispute to the Owners directly involved.

10.3 Suspension of Privileges and Rights. The Board of Directors is authorized to suspend membership rights and privileges against any Owner who violates the Governing Documents, or if there is a violation by Residents of or Guests to his or her Lot. Following are the rights which may be suspended: (i) the right to use Common Area recreational facilities and amenities; and (ii) voting rights. After notice and hearing as provided in the Governing Documents, privileges and rights will remain suspended for the period directed by the Board or until such time as the violation is cured and any fine imposed has been paid.

10.4 Fines. The Board of Directors is authorized to assess fines against any Owner who violates the Governing Documents, or if there is a violation by his or her Residents or Guests. In the case of ongoing violations the fine may be imposed on a daily basis. The Board shall adopt a fine schedule as described in the Davis-Stirling Act and may impose other conditions on the imposition of fines in the Rules.

10.5 Hearing Procedures. Except as described below, before any disciplinary action is imposed by the Board, it shall conduct a hearing and notify the Owner of his or her right to attend the hearing in accordance with the Davis-Stirling Act, this Declaration and any Rules adopted by the Board. The notice and hearing will be conducted as follows:

a. ***Executive Session.*** The Board shall convene a hearing in executive session to consider the issue of possible discipline against the Owner, unless the Owner requests that the hearing be held in an open session Board meeting.

b. ***Notice.*** Notice of the date, time and location of the hearing, as well as statements containing the nature of the alleged violation and the right of the Member to attend the hearing, must be given to the Owner in writing by individual delivery not later than ten (10) calendar days prior to the date of the hearing.

c. ***Right to Be Heard.*** At the hearing, the Owner has a right to be heard orally and/or in writing. The Owner may be accompanied by an attorney or other representative but there is no duty to meet with such person unless the Owner is also present. If the Owner fails for any reason to attend the hearing the Board may convene the hearing anyway and decide the matter based on the information and documentation available to it.

d. ***Decision of Board.*** After the hearing, the Owner will be excused and the Board will deliberate in executive session to determine whether a violation has occurred and if so what sanctions to impose.

e. ***Notice of Decision.*** Within fifteen (15) days after conclusion of the hearing, the Board shall notify the Owner in writing of its decision and the grounds for the decision.

10.6 Violations Constitute a Nuisance. Any violation of the Governing Documents, as well as a violation of any law within the Development, is declared to be and shall constitute a nuisance.

10.7 Cumulative Remedies. The exercise by the Association of the rights and remedies specified in this Declaration shall be non-exclusive and shall not limit the right to resort to any other remedy available under California law.

10.8 Failure Not A Waiver. Failure by the Board or any Owner to enforce the Governing Documents shall not be deemed a waiver of the right of such party to do so in the future for the same or a different violation.

10.9 Remedy at Law Inadequate. Any violation of the Governing Documents, except nonpayment of an Assessment or fine, shall be deemed to be a nuisance. In such instance the Association and the Owners expressly declare and stipulate that an action at law to recover damages is inadequate and thus the violation shall be enjoined by a temporary restraining order, preliminary injunction, and permanent injunction.

10.10 Dispute Resolution. In the event of any dispute, to the extent applicable and if invoked by one side or the other, the parties shall comply with the internal dispute resolution (“IDR”) procedures contained in the Davis-Stirling Act, this Declaration and as may otherwise be adopted by the Board. In addition, to the extent applicable, the parties will comply with the alternative dispute resolution (“ADR”) procedures contained in the Davis-Stirling Act, this Declaration and as may otherwise be adopted by the Board.

10.11 Disputes/Judicial Reference. All actions arising from or related to the Governing Documents or the management or operation of the Association or the Development shall be decided by judicial reference in accordance with the following guidelines.

a. ***Disputes Subject to Judicial Reference.*** If the parties to a dispute who have agreed to use an ADR process pursuant to Section 10.10 cannot agree on a form of ADR, then the form of ADR to be utilized shall be judicial reference.

b. ***Appointment of Referee.*** Within thirty (30) days after it is determined that judicial reference will be used for the ADR process, the parties to the dispute shall select the referee. The referee shall be an attorney or retired judge, unless the parties agree otherwise. Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction.

c. ***Proceedings.*** The judicial reference shall be conducted in accordance with the applicable provisions of Sections 638 through 645.2 of the Code of Civil Procedure, and any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision. The parties shall use the procedures adopted by the American Arbitration Association for judicial

reference or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties. The parties shall complete the judicial reference process within ninety (90) days after the acceptance of the Request for Resolution required by the Davis-Stirling Act, unless this period is extended by written stipulation signed by both parties.

d. **Rules and Procedures.** The following rules and procedures shall apply in all cases, unless the parties agree otherwise:

(1) The proceedings shall be heard in Los Angeles County.

(2) The referee may require one or more pre-hearing conferences.

(3) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(4) The referee shall have the power to hear and dispose of motions in the same manner as a trial court judge.

(5) The referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties.

(6) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

e. **Costs.** The costs of the judicial reference shall be borne equally by the parties.

f. **Failure to Participate.** If either party elects not to participate in the judicial reference proceeding because all necessary and appropriate parties will not participate, the Association or any Owner may bring an action in any court of competent jurisdiction to resolve the dispute.

g. **Claims and Disputes Exempt from Judicial Reference.** The following types of claims and disputes shall be exempt from the judicial reference provisions set forth in this Section 10.11:

(1) An enforcement action that is not solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

- (2) A small claims action.
- (3) An Assessment dispute, except as otherwise provided by law.
- (4) An action unrelated to the enforcement of the Davis-Stirling Act, the Nonprofit Mutual Benefit Corporation Law, or the Governing Documents against the Association or a Member.

10.12 Attorneys' Fees and Costs. In any legal proceeding or arbitration arising from or related to the Governing Documents, the prevailing party shall recover his, her, or its reasonable attorneys' fees and costs.

ARTICLE 11

ASSOCIATION INSURANCE

The Association shall purchase and maintain in force and effect, as part of the Common Expenses, the policies of insurance which are described below in this Article 11.

11.1 Authority to Purchase. All insurance specified in this Article 11, or otherwise deemed prudent by the Board, shall be purchased and maintained by the Association if commercially available. The premiums shall be part of the Common Expenses.

11.2 Casualty. The Association shall purchase and maintain a master or blanket policy naming as insureds the Association and its officers, directors, employees, committee members, and Manager. The policy will include, at a minimum, coverage for fire, theft, vandalism, and any other loss or peril to the Common Area which the Board believes is necessary or appropriate to include. The policy shall also specify that all insurance proceeds shall be payable to the Association as trustee to be held and expended as provided in this Declaration for the benefit of the Owners and their respective mortgagees. This casualty insurance is not required to include earthquake coverage, but the Association may purchase earthquake insurance and other types of casualty insurance for the Common Area, in the Board's discretion, as described in this Article. Notwithstanding anything contained in this Article or as otherwise provided for in the Declaration, each Owner shall be responsible to insure his or her Lot.

11.3 General Liability Insurance. The Association shall purchase and maintain one or more comprehensive public liability and property damage policies naming as insureds the Association and its officers, directors, employees, committee members, managing agent, and management company (if any). The policy shall provide immediate protection with minimum limits of at least Two Million Dollars (\$2,000,000.00) per occurrence or such other minimum coverage amount as may be required by the Davis-Stirling Act to offer civil liability protection to the Owners from causes of action in tort arising solely by reason of an Owner's ownership interest in the Common Area.

11.4 Directors and Officers Insurance. The Association shall purchase and maintain directors and officers errors and omission insurance providing coverage in an amount which is not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence, or such other minimum coverage amount as may be required by the Davis-Stirling Act to offer individual liability protection to volunteer directors and officers of the Association. Members of the Architectural Committee and other members of Association committees shall also be covered under the insurance required by this Section 11.4.

11.5 Worker's Compensation. The Association shall purchase and maintain worker's compensation and employer's liability insurance as required by law or otherwise deemed prudent by the Board.

11.6 Fidelity Insurance. The Association shall purchase and maintain fidelity coverage for any Persons, officers, directors, employees, volunteers, and managing agents who handle or may handle the funds of the Association, whether or not such Persons are compensated for their services. The amount of the coverage shall be, at a minimum, the sum equal to three (3) months of Regular Assessments plus the Reserve Accounts.

11.7 Other Insurance. The Association may obtain and maintain such other insurance policy or policies as the Board, in its sole discretion, deems reasonable and/or necessary.

11.8 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association and as trustee for the Owners and the Mortgagees as their respective interests may appear. In the event of damage or injury which is covered by an Association policy, the Owners may pursue collection from such policy and in the event of coverage, the Owners hereby waive and release all claims against the Association, its officers, directors, employees, Manager, and other Owners with respect to any loss covered by such insurance.

11.9 Payment of Policy Proceeds. Regardless of the nature of the claim, all insurance proceeds paid under a policy purchased by the Association shall be delivered and made payable to the Association only. The Association shall then use those funds for the purpose described in the claim. If the claim was filed by or on behalf of an Owner, the Owner is responsible for paying the cost of the deductible.

11.10 Failure to Acquire Insurance. The Association and its directors and officers shall have no liability to any Owner or mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required under this Article because: (1) the insurance is no longer commercially available; (2) the insurance, if commercially available, can be obtained only at a cost that the Board, in its sole discretion, determines to be unreasonable under the circumstances; or (3) the Members fail to approve any Regular Assessment increase or Special Assessment necessary to fund the premium for the insurance. In such event, the Board shall, as soon as is practicable, notify each Member and mortgagee that the specific insurance will not be obtained or maintained.

11.11 Insurance Policy Review. The Board shall periodically, but not less than once each fiscal year, review the Association's insurance policies and make adjustments to the terms and conditions of such policies as the Board considers to be in the best interests of the Association. That review shall include an appraisal by a qualified appraiser of the current replacement costs of all Improvements and property covered under the Association's fire and casualty insurance policy, unless the Board is satisfied that the current dollar limit of such policy, coupled with the balance of the then current Reserve Accounts, is equal to or greater than the current replacement costs.

11.12 Specific Association Insurance Provisions. The policies of insurance obtained and maintained by the Association shall be subject to the provisions of this Article.

a. **Insurance Premiums.** Premiums for insurance policies obtained and maintained by the Association shall be common expenses paid from Regular Assessments and, as applicable, Special Assessments. Notwithstanding the foregoing, if there is an increase in the premium for any insurance policy obtained or maintained by the Association due to the negligence, willful acts, or omissions of an Owner, a Resident of the Owner's Lot, or a Guest of either, such Owner shall be responsible for the increase in that premium, the cost of which shall be levied as a Special Assessment against the Owner after notice and a hearing before the Board.

b. **Notice of Change in Coverage.** The Association shall, as soon as reasonably practicable, notify all Members if any of the policies described in the Annual Budget Report have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in the Annual Budget Report, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

c. **Beneficiaries.** The Association's insurance policies shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear of record, subject, however, to any loss payment requirements set forth in this Declaration.

d. **Trustee for Policies.** The Association, acting through the Board, shall be the trustee of the interests of all named insureds under the insurance policies obtained and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board has the authority to negotiate loss settlements with insurance carriers; the Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care for the Board and Directors established in the Bylaws and this Declaration. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of such insurance. The Board shall use proceeds received from any insurance policy carried by the Association for the repair, replacement, or restoration of the property for which the insurance was carried, or for such other purpose as may be permitted by this Declaration.

e. **Filing of Claims.** Unless otherwise provided by law, no Owner may claim damage or loss against any insurance policy carried by the Association if such damage or loss would have been covered by an insurance policy required to be carried by the Owner pursuant to Section 11.13 of this Article 11 and the Owner failed to purchase such insurance.

f. **Deductibles.** In the event of a property damage or loss claim for which proceeds are made available under an insurance policy carried by the Association, the responsibility for payment of any deductible applicable to such claim shall be as follows:

(1) An Owner shall be responsible for the cost of any deductible if the damage or loss covered under the claim relates solely to items owned by the Owner, or for which the Owner is responsible, including but not limited to items within the Owner's Lot. If the claim involves damage or loss to multiple Lots, each of the affected Owners shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned by the Owner, or for which the Owner is responsible, included in the claim bears to the total claim amount.

(2) The Association shall be responsible for the cost of any deductible if the damage or loss covered under the claim relates solely to items owned or controlled by the Association, or for which the Association is responsible, including but not limited to Improvements in the Common Area.

(3) If the claim involves damage or loss to one (1) or more Lots and the Common Area, each of the affected Owners shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned by the Owner, or for which the Owner is responsible, included in the claim bears to the total claim amount, and the Association shall be responsible for a proportionate share of the cost of the deductible equal to the proportionate share that the value of the items owned or controlled by the Association, or for which the Association is responsible, included in the claim bears to the total claim amount.

(4) Notwithstanding the foregoing, if any Common Area damage or loss (including, but not limited to, any damage or loss to any Exclusive Use Common Area) is caused by the negligence, willful acts, or omissions of an Owner, a Resident of the Owner's Lot, or a Guest of either, such Owner shall be liable for the cost of the deductible. In such case, the cost of the deductible shall be levied against the Owner as a Reimbursement Assessment, after notice and a hearing before the Board.

(5) The Board may deviate from the procedures set forth in this subsection (f) if, in the Board's sole discretion, such deviation is reasonable under the circumstances and compliant with the law.

g. **Waiver of Subrogation.** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its Directors, officers, the Owners and Residents and Mortgagees, and, if obtainable, cross liability endorsements or severability of endorsements insuring each insured against the liability of each other insured.

11.13 Owner Insurance Requirements.

a. ***Property Damage and General Liability Insurance.*** Each Owner is responsible for insuring his or her personal property located within the Development. Each Owner is also responsible for insuring all property and improvements in the Owner's Lot, including, but not limited to, the interior, exterior, and structural components of the Home on the Lot. Nothing in this Declaration precludes any Owner from carrying public liability insurance as he or she may deem reasonable, however, such insurance coverage may not adversely affect or diminish any coverage under any of the Association's insurance policies. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable are reduced due to insurance carried by an Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

b. ***Renter's and Landlord's Insurance.*** An Owner whose Lot is subject to a Lease shall require as a term of the Lease that the Tenant is required, at all times during the Tenant's tenancy and occupancy of the Owner's Lot, to obtain and maintain "renter's insurance" covering the replacement value of the Tenant's personal property and belongings located in the Lot from damage and loss. Such Owner shall also be required to maintain "landlord's insurance" during the period of the Lease, under an insurance policy that covers the Owner's Lot from financial losses connected with the Lot; such policy shall cover standard perils such as fire, and, to the extent commercially available, include coverage for accidental damage, malicious damage by tenants, and rent guarantee insurance.

c. ***Lack of Insurance.*** The Association shall not be responsible for any damage or loss to an Owner's Lot, another Lot, or the Common Area for which the Owner is responsible and the Owner does not maintain sufficient insurance coverage for the cost of repair and restoration of such damage or loss.

11.14 Injury or Damage Sustained Within a Lot. In the event any personal injury or property damage is sustained by any Person while physically within a Lot, the Owner who owns such Lot shall be liable for that injury or damage. Such Owner shall be required to indemnify, defend, and hold harmless the Association, the Association's Directors, officers, agents, representatives and employees, and the other Owners from and against any and all claims, actions, causes of action, expenses, costs, and liabilities resulting from or in connection with the personal injury or property damage, except to the extent that the negligence or willful misconduct of any of the foregoing indemnitees caused, or contributed to, the injury or damage. In the event of joint ownership of a Lot, the liability of the Owners of the Lot for such bodily injury and property damage shall be joint and several.

ARTICLE 12
DESTRUCTION OF IMPROVEMENTS

In the event of a casualty or other major event that results in destruction of the Development or serious damage to a significant portion thereof, the following regulations will apply.

12.1 Common Area Damage. In the event the Common Areas are partially or totally destroyed by fire, earthquake or other casualty, the following will occur:

a. ***Cost of Reconstruction.*** The Board shall determine the cost of repair and the amount of Reserves and insurance proceeds available for reconstruction. Estimates should be obtained from at least two (2) reputable licensed contractors.

b. ***Automatic Reconstruction.*** If the estimated cost of repair or replacement is less than or equal to three (3) times the amount of the total budget of the Association for the fiscal year in which the casualty occurs, it shall be the duty of the Board, without a vote of the membership, to cause the Common Area to be repaired or rebuilt to substantially the same condition as existed prior to the damage (subject to any increased building standards then in effect). The Reserves and insurance proceeds shall be used for this purpose. Further, unless prohibited by law, the Board shall have the authority, without a vote of the membership, to levy a Special Assessment against the Owners to provide any additional funds needed to complete the project.

c. ***Membership Approval.*** If the estimated cost of repair or replacement is greater than the formula described in subparagraph b above, a membership vote will be taken. The Common Areas shall be repaired or rebuilt utilizing Reserves, insurance proceeds and Special Assessments, unless 75% of the membership votes not to do so. A vote not to repair or rebuild shall be subject to the rights of first mortgagees as provided for in this Declaration.

d. ***Decision Not to Rebuild.*** In the event the membership votes not to rebuild the Common Areas, it shall record a certificate (and any other required governmental notices) announcing the Association's intention not to repair or rebuild the Common Area. Upon recordation of the certificate the right of partition suspended by this Declaration shall be revived. In such event, after all legitimate Association expenses are paid, the balance of any Reserves and insurance proceeds shall be distributed to each Member in equal amounts, subject to the rights of all lenders.

12.2 Right of Entry to Assess Damage And Make Repairs. If repairs or replacements are made under this Article 12, representatives of the Association may enter any Lot (but not the Home on that Lot) to make repairs or assess damage upon reasonable notice to the Owner.

12.3 Negotiations with Insurer. The Board shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed Common Area, and to settle with the insurer for less than full insurance coverage if the Board concludes a

settlement is prudent. Any settlement made by the Board in good faith shall be binding upon all Owners.

12.4 Damage to a Lot. To the extent not covered by insurance, restoration and repair of any damage caused by fire, water intrusion, earthquake or other casualty, to any Lot, as well as damage to the personal property, furniture, furnishings, decorations, improvements, fixtures and improvements of any Owner, shall be made by and at the sole expense of the Owner of that Lot.

ARTICLE 13 **CONDEMNATION**

13.1 Common Area Awards. In the event an action in eminent domain is brought to condemn all or any portion of the Common Areas, the Association shall represent the Owners in all proceedings, negotiations or settlements. Awards for the acquisition of Common Area shall be paid to the Board, as trustee, for distribution to the Owners, each in proportion to his percentage of ownership of the Common Area subject to (i) the rights of lenders, and (ii) recoupment of all delinquent Assessments from any Owner in default at the time of condemnation.

13.2 Awards. In the event all or any portion of one or more Lots are condemned, the award made for such taking shall be payable to the respective Owners of the Lots subject to the rights of lenders and the duty to pay to the Association any delinquent Assessments.

13.3 Revision of Documents. In the event of any condemnation of a part of the Development, the Board shall, as soon as practicable, cause to be prepared, filed and/or recorded a revised subdivision map, Condominium Plan and/or other documents, reports, schedules or exhibits necessary to show the changed or altered status of the Development.

13.4 Status of Membership. In the event a Lot is taken in condemnation, that Lot shall cease to be part of the Development, the Owner shall cease to be a Member of the Association, and the undivided interest in Common Area appurtenant to that Lot shall automatically become vested in the Owners of the remaining Lots in proportion to their respective undivided interests in the Common Area.

ARTICLE 14 **PARTITION AND SEVERANCE**

14.1 Right of Partition. In accordance with the provisions of the Davis-Stirling Act, the right of partition of the Common Area is hereby suspended and no proceeding shall be brought for the partition of said Common Area, except as provided by law or as expressly stated in this Declaration.

14.2 Power of Attorney to Sell. Each Owner does hereby grant to the Association an irrevocable power of attorney coupled with an interest, to sell the Common Area for the benefit of all of the Owners, which power of attorney shall be binding upon all such Owners, but shall be exercisable only after: (i) the happening of one of the conditions set forth in the Davis-Stirling Act, (ii) approval of such exercise by a majority of the total voting power of the Association, and (iii) the recordation in the office of the County Recorder a certificate executed by the President and Secretary of the Association or stating that the power of attorney is properly exercisable hereunder.

14.3 Proceeds of Partition Sale. Whenever an action is brought for the partition by sale of the Common Areas, as provided in the Governing Documents, each Owner shall share in the proceeds of such sale in proportion to the relative value of his or her Lot as determined by an MAI appraisal obtained by the Board. Each Owner hereby expressly waives any requirement of law which might be construed as requiring that such proceeds be shared in a different manner, including any provisions under the Davis-Stirling Act or any similar statute then in effect.

14.4 Prohibition Against Severance. No Owner shall have the right, for any purpose, to sever his Lot from his undivided interest in the Common Area.

ARTICLE 15 **AMENDMENTS**

15.1 Amendment. This Declaration may be amended by the secret ballot vote of Members representing a majority of the voting power of the Association; provided, however, that the specified percentage of Members necessary to amend a specific provision of this Declaration shall not be less than the percentage of affirmative votes required for action to be taken under that provision. Notwithstanding the foregoing, the Board shall have the power to amend this Declaration without Member approval, upon adoption of a Board resolution authorizing such amendment, if such amendment is: (1) permitted by the law to be adopted by the Board without Member approval; (2) required under any law; and/or (3) to correct a cross-reference in this Declaration to the Davis-Stirling Act or another law that was repealed and continued in a new provision. Such Board resolution shall be recorded with the amendment. Any amendment or restatement adopted under this Article shall become effective after compliance with the requirements set forth in the Davis-Stirling Act.

15.2 Confirmation of Approval. A certificate signed and sworn to by two (2) officers of the Association that the requisite number of Owners have either voted or consented in writing to any amendment, when recorded, shall be conclusive evidence of such fact.

ARTICLE 16 **PROTECTION OF LENDERS**

16.1. Mortgages Permitted. Any Owner may encumber his or her Lot with a mortgage.

16.2 Subordination. Any Assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any first mortgage that encumbers any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage, unless the mortgagee expressly subordinates its interest in writing to such lien. The transfer of ownership of a Lot and its appurtenant percentage interest in the Common Area, as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage, shall extinguish the lien of Assessments which were due and payable prior to the transfer of the ownership interest. No transfer of an ownership interest, as the result of a foreclosure or exercise of a power of sale, shall relieve the new Owner, whether it be the former mortgagee or beneficiary of the first mortgage or another Person, from liability for Assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing, if state statute requires the first mortgagee or senior encumberer of a Lot to bear responsibility for a percentage and/or number of specific months of Assessments due and payable prior to the transfer of an ownership interest as the result of a foreclosure or exercise of a power of sale, such controlling statute shall obligate the first mortgagee or senior encumberer to pay such Assessments in spite of any contrary provisions of this Section 16.2. All taxes, Assessments, and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Lots and not to the Property as a whole.

16.3 Amendments.

a. No amendment to this Declaration shall affect the rights of any Eligible Mortgage Holder under any mortgage made in good faith and for value and recorded before the recordation of any such amendment, unless an Eligible Mortgage Holder either joins in the execution of the amendment or approves it in writing as a part of such amendment. For purposes of this Article 16, an “Eligible Mortgage Holder” shall mean any first mortgagee who has requested notice of any material amendment to this Declaration.

b. Unless a higher percentage is required by a specific provision of this Declaration, the consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Lots that are subject to mortgages held by Eligible Mortgage Holders must be obtained prior to adoption of any amendment of a material nature affecting any of the following matters:

- (1) Voting rights;
- (2) Assessment liens or the priority of Assessment liens;
- (3) Reserves for maintenance, repair, or replacement of the Common Area Improvements;
- (4) Responsibility for maintenance and repairs;
- (5) Allocation of interests in the Common Area or Exclusive Use Common Areas, or the right to their use;

- (6) Insurance requirements;
- (7) Convertibility of Lots into Common Area or vice versa;
- (8) Expansion or contraction of the Development or the addition, annexation, or withdrawal of property to or from the Development;
- (9) Restrictions on the leasing of Lots;
- (10) Restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (11) Restoration or repair of the Development after damage or partial condemnation in a manner other than that specified in this Declaration;
- (12) Any provisions that expressly benefit Mortgagees or any insurers or guarantors of mortgages affecting Lots; or
- (13) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs.

c. An Eligible Mortgage Holder who receives a written request to approve an amendment to this Declaration pursuant to subsection (b) of this Section 16.3 and fails to submit a response to that request within thirty (30) days after receiving notice of the proposal shall be deemed to have approved the amendment in accordance with subsection (a) of this Section 16.3, provided the notice was delivered by certified or registered mail with a return receipt requested.

16.4 Restriction on Certain Changes Unless at least three-fourths (3/4) of the Eligible Mortgage Holders and two-thirds (2/3) of the Owners have given their prior written approval, neither the Association nor the Owners shall be entitled:

a. By act or omission, to seek to abandon or terminate the Development as a planned development, except for abandonment provided by statute in case of substantial loss to the Lots and Common Area.

b. To change the pro rata interest or obligations of any Lot for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or for determining the pro rata share of ownership of the Common Area (if the Owners have any ownership interest in the Common Area).

c. To partition or subdivide any Lot.

d. By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of the foregoing provision.

e. To use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement, or reconstruction of improvements in the Common Area, except as provided by statute in case of substantial loss to the Common Area.

f. By act or omission, to change, waive, or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to architectural design or the exterior maintenance of the Common Area.

g. To fail to maintain fire and extended coverage on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

16.5 Right to Examine Books and Records. The Association shall make available to first mortgagees (and insurers and guarantors of any first mortgage), current copies of the Governing Documents and the books, records, and financial statements of the Association during normal business hours or under other reasonable circumstances. The Association may impose a fee for providing the foregoing, which may not exceed the reasonable cost to prepare and reproduce the requested documents. On receipt of a written request from a first mortgagee, the Association shall provide the first mortgagee with the review of the financial statement of the Association for the immediately preceding fiscal year, within a reasonable time frame.

16.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any first mortgagees pursuant to their mortgages in case of distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of any Lots or Common Area. Any provision to the contrary in this Declaration, the Bylaws or other Governing Documents is to such extent void.

16.7 Notice to Mortgagees.

a. If any Owner is in default under any provision of this Declaration or under any provision of the other Governing Documents and the default is not cured within sixty (60) days after written notice to that Owner, the Association, upon request, shall give to any first mortgagee of such Owner a written notice of such default and of the fact that the sixty (60) day period has expired.

b. Any mortgage holder, insurer, or guarantor may send a written request by certified mail to the Association stating both its name and address, and the address of the Lot of which it holds, insures, or guarantees a mortgage, to receive timely written notice of any of the following:

(1) Any condemnation or casualty loss that affects either a material portion of the Development or the Lot securing the Mortgage;

(2) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot encumbered by the holder's, insurer's, or guarantor's Mortgage;

(3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or

(4) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

16.8 Breaches of Declaration. 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 contained in this Declaration shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale, or otherwise. Any mortgagee shall have the right, but not the obligation, to cure any default or violation of this Declaration by an Owner.

16.9 Foreclosure. If any Lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any Assessment lien shall not operate to affect or impair the lien of the first mortgage. On foreclosure of the first mortgage, any lien for delinquent Assessments shall be subordinate to the lien of the first mortgage, and the purchaser at the foreclosure sale shall take title free of responsibility for the Assessment lien, unless the then current law provides otherwise. On taking title, the purchaser of the Lot shall only be obligated to pay Assessments or other charges that are levied or assessed by the Association on or after the date the purchaser acquires title to the Lot. Any subsequently levied Assessments or other charges against the Lot may include previously unpaid Assessments, provided that all Owners, including the purchaser and his or her successors and assigns, are required to pay their proportionate share of such unpaid Assessments, at the rates provided in this Declaration. Any mortgagee who acquires title to a Lot by foreclosure, by deed in lieu of foreclosure, or by assignment in lieu of foreclosure shall not be required to cure any breach of this Declaration that is non-curable or of a type that is not reasonably practical or feasible to cure.

16.10 Right to Furnish Information. Any mortgagee may furnish information to the Association concerning the status of any mortgage.

16.11 No Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lot is imposed by this Declaration.

ARTICLE 17

MISCELLANEOUS

17.1 Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association and the Owner of any Lot, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date of recordation of this Declaration. Thereafter, these covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless this Declaration is rescinded by the written consent of Owners holding a majority of the then total voting power of the Association

(and approved by Eligible Mortgage Holders in accordance with Section 16.4 of this Declaration). The rescission shall be effective on recordation of a notice of rescission in the records of the county.

17.2 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the use, operation and maintenance of the Development.

17.3 Headings, Number and Gender. The subject headings of the articles, sections, and subsections of this Declaration are included for purposes of convenience and reference only, and shall not affect the construction or interpretation of any of the provisions of this Declaration. Whenever the context so requires, the singular number includes the plural, the plural includes the singular, the masculine gender includes the feminine and/or neuter and the neuter gender includes the masculine and/or feminine.

17.4 Severability. The provisions of this Declaration are severable from one another. If any provision is found to be invalid, illegal or unenforceable it shall not affect the validity, legality and enforceability of the remaining provisions.

17.5 Conflicting Provisions. In the event of inconsistency in the Governing Documents, the order of priority shall be: (i) this Declaration, (ii) the Articles, (iii) the Bylaws, (iv) the Rules, unless the Rule was adopted in compliance with the law. In the event of inconsistency between the Governing Documents and the law, the law shall prevail.

17.6 No Public Rights in the Development. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

17.7 Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the Owners, and their respective heirs, personal representatives, grantees, lessees, licensees, successors and assigns.

17.8 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 such remedy.

17.9 No Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, rental, or occupancy of the Owner's Lot on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information, nor shall any Owner discriminate against or harass any prospective purchaser, tenant, or Resident of the Owner's Lot because of such bases. Notwithstanding the foregoing, selection preferences based on age in the sale or rental of an Owner's Lot, imposed in accordance with Section 51 of the Civil Code or a federally approved housing program, as may be applicable, shall not constitute age discrimination.

17.10 Attorneys' Fees. Except as otherwise provided in this Declaration, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the 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 its reasonable attorneys' fees and costs. The foregoing provision shall also apply to attorneys' fees and costs incurred to collect upon any judgment entered as a result of such litigation or alternative dispute resolution procedure.

17.11 Delivery of Documents and Information. Documents, notices, and other information to be delivered (1) to the Association by a Member, (2) to an individual Member by the Association, or (3) to all Members by the Association, pursuant to the Governing Documents or the Davis-Stirling Act, shall be delivered in accordance with the methods permitted under, and the requirements of, the Davis-Stirling Act.

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first written above.

Shadow Hills Estates Homeowners' Association

President:

Secretary:

**CERTIFICATE OF PRESIDENT AND SECRETARY
OF
SHADOW HILLS ESTATES HOMEOWNERS' ASSOCIATION**

We, the undersigned, do hereby certify that:

1. We are the duly appointed and acting President and Secretary of Shadow Hills Estates Homeowners' Association (the "Association"), a California nonprofit mutual benefit corporation.

2. The foregoing *Restated Declaration of Covenants, Conditions and Restrictions, Shadow Hills Estates Homeowners' Association* (the "Declaration") was (i) approved by at least 75% of the total voting power of the Association on _____, 20__, in accordance with the requirements of the Original Declaration (defined in the Declaration) and the Davis-Stirling Common Interest Development Act, and (ii) consented to by at least 75% of all Mortgagees in accordance with Article VIII, Section 4 of the Original Declaration.

3. Capitalized terms not defined herein shall have the meanings given to them in the Declaration.

IN WITNESS WHEREOF, we have executed this Certificate of President and Secretary this ____ day of _____, 20__.

By: _____

Name: _____

Title: President

By: _____

Name: _____

Title: Secretary

