

# **Hampton Park Homeowners Association**

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## **Covenants, Conditions, and Restrictions (CC&R's)**

### **Cover Page**

**“If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, 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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**HAMPTON PARK**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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**HAMPTON PARK**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION**, made on the date hereinafter set forth, by HP ASSOCIATES, LP, a California limited partnership, ("Declarant"), is made with reference to the following facts:

**A. Location of Property.** Declarant is the owner of certain property located in the City of Vacaville ("City"), County of Solano, State of California, more particularly described on the map entitled "Final Map for Hampton Park," filed for record in the Office of the Recorder of the County of Solano, State of California, on September 24, 2002, in Book 74 of Maps, page 53.

**B. Phases.** The development shall be referred to as the "Project" as defined in section 1.28. The Project will be developed in four (4) phases, as provided in Exhibit "A" attached hereto.

**C. Association.** Each Lot shall have appurtenant to it a membership in the HAMPTON PARK HOMEOWNERS ASSOCIATION, a nonprofit mutual benefit corporation.

**D. Intention.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots. Phase 1 of the Project, Lots 1-22; inclusive, and Lots 26-32, inclusive, and Common Area Parcels W and X as shown on the Map, will be subject to this Declaration upon its recordation. Phases 2, 3 and 4, described on Exhibit A, will each subsequently be subject to this Declaration upon recording of a Declaration of Annexation applicable to each such phase as provided in section 2.3, provided that the property in each subsequent phase is subject to section 4.12 to the extent applicable.

**NOW, THEREFORE**, Declarant hereby declares that Phase 1 (and the property in each subsequent phase to the extent described in Recital B) described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and desirability of the Project and every part of it, and which shall run with the Project and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

<b>This Project is a Senior Citizen Housing Development - See Section 7.2 of this Declaration.</b>
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This Project is part of the Leisure Town Development ("Leisure Town") and is also subject to the Declaration of Restrictions, Conditions & Covenants and Amendments to Declaration of Restrictions, Conditions & Covenants for Leisure Town Development filed as Instrument Number 1994-00000384 Solano County Official Records ("Leisure Town Development Declaration").

<b>Aircraft Overflight:</b>
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The Project is in the area subject to overflight by aircraft using Travis Air Force Base and as a result residence may experience inconvenience, annoyance, or discomfort arising from the noise of such operations. State law [Public Utilities Code Section 21670] establishes the importance of public use airports, including federal military airports, to the protection of the public interest of the people of the State of California. Residents of property near a federal military airport should therefore be prepared to accept such inconvenience, annoyance or discomfort from normal aircraft operations.
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## **ARTICLE 1 DEFINITIONS**

1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

1.2. "Assessment" shall mean that portion of the Common Expenses of maintaining, improving, repairing, operating and managing the Association, the landscaping of Front Yards of Lots and Drainage Swales of Project which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments and Special Assessments.

1.3. "Association" shall mean and refer to the HAMPTON PARK HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots in the Project.

1.4. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

1.5. "Bylaws" shall mean and refer to the bylaws of the Association, as amended from time to time.

1.6. "Cart Path" shall mean and refer to the golf cart paths that runs through the Drainage Swales within the Project.

1.7. "City" shall mean and refer to the City of Vacaville, California, a municipal corporation.

1.8. "Common Expenses" means and includes the actual and estimated expenses of maintaining, repairing, operating and replacing the improvements within the Drainage Swales, including the portion of the Cart Path that runs through the Drainage Swales, the undertaking of the landscape maintenance of Front Yards, and any other maintenance requirements stated in section 5.1a, and any reasonable reserve for such purposes as found and determined by the Board, the other cost of operating the Association, and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.9. "Declarant" shall mean and refer to HP ASSOCIATES, LP, a California limited partnership, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration in a recorded written document.

1.10. "Declaration" shall mean and refer to this Declaration, as amended or supplemented from time to time.

1.11. "Drainage Swales" shall mean those areas of the Project shown on the Map as Lots W, X, Y, and Z.

1.12. "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."

1.13. "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with section 9.5.C.

1.14. "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 9.5.C.



1.15. "First Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any Lot.

1.16. "First Mortgage" shall mean and refer to any recorded mortgage made in good faith and for value on a Lot with first priority over other mortgages thereon.

1.17. "Foreclosure" shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in such property is sold, pursuant to California Civil Code § 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable law.

1.18. "Front Yards" shall mean those areas of a Lot exterior of the residence that are not fenced in rear or side yard areas.

1.19. "Lot" shall mean and refer to each Lot shown on the Map, with the exception of Lots W, X, Y, and Z, which are the Drainage Swales.

1.20. "Maintenance Plan" shall mean and refer to the Maintenance Plan attached to this Declaration as Exhibit "B".

1.21. "Map" shall mean and refer to that Map entitled "Final Map for Hampton Park," filed for record in the Office of the Recorder of the County of Solano, State of California, on September 24, 2002, in Book 74 of Maps, page 53.

1.22. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.23. "Mortgage" shall include a deed of trust as well as a mortgage.

1.24. "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.25. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.26. "Owner" or "Owners" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of fee simple title to any Lot which is a part of the Project, but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.27. "Person" means a natural person, a corporation, a partnership, a trust, or other legal entity.

1.28. "Project" shall mean and refer to all of the real property in Phase 1 described on the Map and in Exhibit "A" and all improvements on that real property, subject to this Declaration and any subsequent phase which may become annexed into the Project in accordance with section 2.3, and thereby become subject to this Declaration.

1.29. "Project Documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, and the Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.30. "Regular Assessments" shall mean and refer to a Regular Assessment determined and levied pursuant to section 4.3A of this Declaration.

1.31. "Reimbursement Charges" shall mean and refer to a charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Lot into compliance with the provisions of this Declaration, determined and levied pursuant to section 4.11 of this Declaration.

1.32. "Residence" shall mean the residential structure built by the Declarant on a Lot, and additions and modifications made thereto in accordance with this Declaration.

1.33. "Residence Yard" shall mean and refer to the rear or side yards of a Lot that are enclosed within fences.

1.34. "Shared Fences" means the fences that enclose a Residence Yard of a Residence which is built as part of the original construction of a Residence located on the boundary line of a Lot with an adjacent Lot and is shared and used in common with an adjacent Lot. Shared Fences are to be maintained and repaired by the Lot Owners who share the Shared Fences as set forth in Section 2.5 of this Declaration.

1.35. "Special Assessment" shall mean and refer to a Special Assessment determined and levied pursuant to section 4.3B of this Declaration.

## ARTICLE 2 DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1. **Description of Project:** The Project is a planned development which during Phase 1 shall consist of 29 residential Lots (Lots 1-22; inclusive, and Lots 26-32, inclusive, as shown on the Map) and Common Area Parcels W and X, and all improvements thereon. The additional future Phases are described on Exhibit A: Phase 2 of the Project, if annexed, is expected to contain 24 residential Lots; Phase 3 of the Project, if annexed, is expected to contain 34 residential Lots and Parcels Y and Z; and Phase 4 of the Project, if annexed, is expected to contain 3 residential Lots. Additional property may be annexed to and become part of the Project pursuant to section 2.3. The streets in the Project are public streets. Declarant shall be entitled to change the phasing of the Project at Declarant's discretion.

2.2. **Drainage Swales:** The Drainage Swales shall be those areas shown on the Map as Lots W, X, Y and Z. The Drainage Swales shall be conveyed to and owned by the Association, with Parcels W and X to be conveyed with Phase I and Parcels Y and Z to be conveyed with Phase III. The Drainage Swales are to be maintained and operated by the Association as set forth in section 5.1A and the Maintenance Plan attached to this Declaration as Exhibit "B".

2.3. **Annexation of Additional Property:** Additional property may be annexed to and become subject to this Declaration by any of the following methods set forth in this section. Upon annexation, the additional property shall become subject to this Declaration without the necessity of amending individual sections hereof.

A. **Annexation Pursuant to Plan:** At the sole discretion of Declarant, any or all of the property described in Exhibit "A" as the Annexation Property may be annexed to and become a part of the Project, subject to this Declaration, and subject to the jurisdiction of the Association, without the necessity of amending individual sections of this Declaration, without the assent of the Association or its Members, and without the assent of Owners on condition that:

(1) **Plan Approved:** The annexation and development of additional phases shall be in accordance with a plan of development submitted to the Department of Real Estate of the State of California.

(2) **Declaration of Annexation:** A Declaration of Annexation shall be recorded covering the applicable portion of the property to be annexed. The Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration.

**B. Annexation Pursuant to Approval:** Property other than that described in section 2.3.A may be annexed to the Project upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the voting power of its Members, excluding the Declarant, and the approval of Eligible Mortgage Holders as may be required under section 9.5.D. Upon such approval, the Owner of such property may file of record a Declaration of Annexation. Upon the recording of such Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association.

**C. Effect of Annexation:** Assessments collected from Owners in the Project may be expended by the Association without regard to the particular phase from which such Assessments came.

**D. Quality of Construction:** Future improvements to the Project will be consistent with initial improvements in terms of structure type and quality of construction.

**E. Failure to Annex:** If any remaining phase is not annexed as provided above and the property in that phase requires ingress and egress access over private streets located within the Project and access to and use of common utilities, easements shall exist for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential developments within the Annexation Property of comparable size and density, provided, however, that the properties not annexed (and their owner(s)) shall be obligated to pay their equitable share of the cost of maintenance and repair of those private streets and utilities and shall be subject to a lien or liens for said maintenance and repair costs, as provided in section 4.12 hereof.

**F. Right of Successor Declarant to Annex:** The right of unilateral annexation provided for in section 2.3.A constitutes a covenant running with the land, and is, as such, enforceable by any successor or assignee of Declarant who acquires any part of the Annexation Property, and who assumes the role of Declarant as provided in section 1.8.

**2.4. Maintenance Easement:** An easement over each Lot as the servient tenement is reserved by Declarant in favor of each other Lot as the dominant tenement, and in favor of the Association, for the purpose of allowing the Association's agents to enter the Lot to perform such maintenance, if any, as the Association may do in accordance with the provisions of sections 5.1.A and section 7.20 of this Declaration.

## **2.5. Shared Fences:**

**A. General Rules of Law to Apply.** Each fence of a Residence Yard that is built as part of the original construction of a Residence, and is shared and used in common with the Residence on an adjacent Lot is a Shared Fence.

**B. Sharing of Repair and Maintenance.** The cost of reasonable repair, maintenance and replacement of a Shared Fence shall be shared by the Owners who make use of the Shared Improvement. The Owners who share such a Shared Fence shall cooperate in the maintenance, repair and replacement of such Shared Fence, and any Owner who has had use of the Shared Fence may maintain, repair and replace

the Shared Fence and if the Owner of the adjacent Lot thereafter makes use of the Shared Fence, that Owner shall contribute to the cost of maintenance, repair or replacement thereof in proportion to such use; provided, however, that the Owner or Owners whose negligent act or omission caused the damage or destruction, shall bear the full cost of restoration that is not covered by insurance. Each Owner of a Lot that shares Shared Fence shall have an non-exclusive easement over and across the adjacent Lot to undertake maintenance, repair or replacement of the Shared Fence to be exercised in a reasonable manner so as not to unreasonably interfere with the use and enjoyment of the adjacent Lot and the Residence thereon by the Owner of that adjacent Lot.

**C. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this section **2.5** shall be appurtenant to the land and shall pass to such Owner's successors in title. The cost of maintenance, repair, replacement, restoration and reconstruction of Shared Fence shall be presumed to be shared equally by the respective Lot Owners whose respective Lots share such Shared Fence.

**D. Arbitration.** In the event of any dispute arising concerning a Shared Fence or concerning the provisions of this section, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall first be submitted to the Board of Directors of the Association for resolution by mediation arranged by the Board. If the Owners cannot resolve the dispute by mediation arranged by the Board of Directors of the Association, be submitted to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor thereto, and judgment may be entered thereon in any court having jurisdiction.

**2.6. Cart Path Easements:** The Drainage Swales are and shall be subject to easements for right of way for golf carts and pedestrian use for all Owners or other owners of residences in Leisure Town.

**2.7. Easement for Water Lines:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of the location and maintenance, repair and replacement of the common irrigation systems that serve the Front Yards of the Lots and for allowing the Association's agents to enter the Lots to maintain that portion of the irrigation system located thereon. No Owner or occupant shall commit any act that would interfere with the operation of any common irrigation system installed on the Owner's Lot.

**2.8. Drainage Easements:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of the location of drainage lines and systems that may run over and across adjoining Lots as installed by the Declarant. Whenever drainage facilities serving a Lot lie in or upon a Lot or Lots owned by other than the Owner of a Lot served by said drainage facilities, the Owners of any Lots served by said drainage facilities, shall have the right of reasonable access to repair, to replace and generally maintain said drainage facilities as and when the same may be necessary.

**2.9. Other Easements:** Each Lot is subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

**2.10. Easements to Accompany Conveyance of Lot:** Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of any Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

**2.11. Rights of Entry and Use:** The Lots shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The easements described in this Article 2;

C. The right of the Association's agents to enter any Lot to perform maintenance as described in section 7.20;

D. The rights of the Declarant during construction as described in section 9.6.

**2.12. All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds, subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

### **ARTICLE 3**

#### **ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1. Association to Manage Drainage Swale Areas and Front Yard Landscaping:** The Association shall manage, operate and maintain the Drainage Swales and shall maintain the landscaping of the Front Yards in accordance with the provisions of this Declaration, and shall undertake the other duties and responsibilities set forth in this Declaration and in the Articles and Bylaws.

**3.2. Membership:** The Owner of a Lot shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws.

**3.3. Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the Lot through Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

**3.4. Membership and Voting Rights:** Membership and voting rights shall be as set forth in the Bylaws.

## ARTICLE 4 ASSESSMENTS AND LIENS

**4.1. Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay to the Association annual Regular Assessments or charges, Special Assessments for purposes permitted in this Declaration, and Reimbursement Charges, such Assessments and Reimbursement Charges to be established and collected as subsequently provided in this Declaration; and

(2) to allow the Association to enforce any assessment lien established under this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

The Regular Assessments and Special Assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made, the lien to become effective upon recordation of a notice of delinquent Assessment. Each such Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation (joint and several) of each person who was the Owner of such property at the time when the Assessment fell due. No Owner of a Lot may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the any portion of the Project or by the abandonment of his Lot.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2. Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Project and to enable the Association to perform its obligations hereunder.

**4.3. Assessments:**

**A. Regular Assessments:** The Board shall establish and levy annual Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual Regular Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account.

**B. Special Assessments:** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots in the same manner as annual Regular Assessments, except in the case of a Reimbursement Charge levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member and his Lot into compliance with provisions of the Project Documents.

**4.4. Restrictions on Increases in Regular Assessments or Special Assessments:** The Board may not impose an annual Regular Assessment on any Lot which is more than twenty percent (20%) greater than the annual Regular Assessment for the immediately preceding fiscal year or levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the Voting Power of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The Board may increase annual Regular Assessments by up to twenty percent (20%) over the annual Regular Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code § 1365(a), which provisions are set forth in section 12.1(1) of the Bylaws or has obtained the approval of such increase by the Members in the manner set forth above in this section 4.4.

Notwithstanding the foregoing, the Board, without membership approval, may increase annual Regular Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court,
- (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered, or
- (3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the Assessment.

The Association shall provide notice to the Owners by first-class mail notice of any increase in the Regular Assessments or Special Assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

This section 4.4 incorporates the statutory requirements of California Civil Code § 1366. If this section of the California Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

**4.5. Notice and Quorum for Any Action Authorized Under Section 4.4:** Any action authorized under section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent or given to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code § 7513.

**4.6. Division of Assessments:** All Assessments, both annual and special, shall be levied equally among the Lots except as provided in section 4.3. Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.7. Date of Commencement of Regular Assessment; Due Dates:** The Regular Assessments provided for in this Declaration shall commence as to all Lots in Phase 1 on the first day of the month following the first conveyance of a Lot to an Owner in Phase 1 under authority of a Public Report. In subsequent phases, the Regular Assessments against all Lots in each phase shall commence on the earlier to occur of (i) the first day of the month following the closing of the first conveyance to the Owner in that phase, or (ii) upon the occupancy of a Lot. In the event that an escrow is closed upon sale of a Lot in a later phase, the closing shall trigger the commencement of assessments on all earlier phases in which sales have not yet occurred (and for which no escrows have yet closed).

The first Regular Assessment for each added phase shall be adjusted according to the number of months remaining in the calendar year after annexation of said phase.

Subject to the provisions of section 4.3 hereof, the Board of Directors shall use its best efforts to fix the amount of the annual Regular Assessment against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the Assessments on a specified Lot have been paid. Such certificate, stating that Assessments have been paid, shall be conclusive evidence of such payment.

**4.8. Effect of Nonpayment of Assessments:** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

**4.9. Transfer of Lot by Sale or Foreclosure:** Sale or transfer of any Lot shall not affect the assessment lien. However, the sale of any Lot pursuant to Foreclosure of a first mortgage shall extinguish the lien of any Assessments on that Lot (including attorneys' fees, late charges, or interest levied in connection therewith as to payments which became due prior to such sale or transfer, except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all Owners of the Lots including such acquirer, and his successors or assigns.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred, and the Lot shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

**4.10. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose a lien on the Lot owned by Owner pursuant to the provisions of Civil Code § 1367, or both. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. Before the Association may place a lien upon a Lot, pursuant to Civil Code § 1367(a), the Association shall notify the Owner in writing by Certified Mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, and the method of collection, any attorneys' fees, and the collection practices used by the Association, including the right



of the Association to the reasonable costs of collection. After compliance with the provisions of Civil Code § 1367(a), the Association may record a notice of delinquent Assessment and establish a lien against the Lot of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record (meaning any recorded mortgage or deeds of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Lot against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Lot no later than 10 days after recordation.

After the expiration of 30 days following the recordation of the lien, an assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the Lot. If the purchase of a Lot would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Lot is owned by the Association, following Foreclosure:

- (1) no right to vote shall be exercised on behalf of the Lot;
- (2) no Assessment shall be assessed or levied on the Lot; and
- (3) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot, which deed shall be binding upon the Owners, successors, and all other parties.

The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

In conformity to Civil Code §1367(c), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings.

**4.11. Reimbursement Charges:** The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred for costs incurred by the Association in the repair of damage to the Project improvements of facilities for which the Member or the Member's guests or other occupant of the Member's Lot were responsible and in bringing the Member and his Lot into compliance with the provisions of the Project Documents in the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners, which notice shall in no event be less than thirty (30) days. If an

Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board. Neither Reimbursement Charges nor fines and penalties for violation of restrictions are "Assessments," and shall not enforceable by assessment lien, but are enforceable by court proceedings.

**4.12. Assessments on Lots in Future Phases:** In the event that Phase 2 through Phase 4, or any of them, are not annexed to this Declaration, and the property in such phase[s] is developed, and sold or leased to persons who use and occupancy those phases, the property and the owner(s) of that property (including Declarant) shall be subject to Regular Assessments and Special Assessments pursuant to section 4.1 levied by the Board for the costs of maintenance and repair of the Drainage Swales. The cost of maintenance and repair under such circumstances shall be prorated equitably between the properties, and payment for that maintenance and repair shall be enforced pursuant to section 4.10. In the event of any disagreement as to the reasonableness of those Regular Assessments and/or Special Assessments or their division, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association. Notwithstanding the foregoing, none of the other sections of this Declaration shall apply to any such phase of the Annexation Property until and unless it is annexed in accordance with section 2.3.

## **ARTICLE 5 DUTIES AND POWERS OF THE ASSOCIATION**

**5.1. Duties:** In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

**A. Maintenance:** The Association shall:

- (1) Maintain and operate the Drainage Swales in accordance with the Maintenance Plan attached to this Declaration as Exhibit "B";
- (2) Repair, maintain and replace, if and when needed, all Cart Paths within the Project;
- (3) Maintain the anti-graffiti coatings on all retaining and/or sound walls within the Project.
- (4) Maintain and replace the landscaping within the Front Yards. The water for landscape irrigation for Front Yards will be provided by the Lot Owner of each Lot.

All maintenance and repair obligations for any residential structure shall be done by and at the expense of the Owner of the Lot on which the residence is situated as described in section 7.20.

**B. Insurance:** The Association shall obtain and maintain such policy or policies of insurance as are required by section 8.1 of this Declaration.

**C. Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article 4 hereof.

**D. Payment of Expenses and Taxes:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

**5.2. Powers:** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting their generality, the Association shall have the following powers:

**A. Manager:** The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold

hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

**B. Adoption of Rules:** The Association or the Board, by majority vote, may adopt reasonable Rules not inconsistent with this Declaration relating to the conduct of Owners or other occupants and their guests with respect to the Property and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

**C. Access:** For the purpose of performing construction, maintenance or emergency repair for the benefit of the Owners in common, and/or to perform maintenance work that a Lot Owner has failed to perform as provided in section 7.20, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner of the Lot in which maintenance work has not been performed, to enter the Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

**D. Assessments, Liens, Penalties and Fines:** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article 4 hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Project Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include but are not limited to fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to section 5.2B, provided that such schedule is approved by vote or written consent of a majority of all Members. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such assessments as appropriate under applicable law.

**E. Enforcement:** The Board shall have the power to enforce this Declaration.

**F. Acquisition and Disposition of Property:** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3) of the total voting power of the Association which shall include two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members.

**G. Loans:** The Board shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure

is still in effect, two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**H. Contracts:** The Board shall have the power to contract for goods and/or services for the Project or for the Association, subject to limitations set forth in this Declaration or the Bylaws. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of section 5.1.B(3) herein.

**I. Delegation:** The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) to conduct hearings concerning compliance by an Owner or other occupants of a Lot their guests or invitee with the Declaration, Bylaws or Rules promulgated by the Board;

(3) to make a decision to levy monetary fines, impose Special Assessments against individual Lots, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Regular Assessments or Special Assessments; or

(5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

**J. Appointment of Trustee:** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in section 4.10 and California Civil Code § 1367(b).

**K. Litigation/Arbitration:** The Association, subject to section 9.13 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure § 383. The Board of Directors has authority to enter into a contingent fee contract with an attorney, in a matter involving alleged design or construction defects in the Project, only as to facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant. The Board shall, not later than thirty (30) days prior to the filing of any civil action by the Association for alleged design or construction defects in the areas of the Project which it is obligated to maintain, notify the Members in the manner required by California Civil Code § 1368.4. In the event the Board files an action in advance of a meeting of the Members, in order to avoid the running of a statute of limitations, the Board shall call a special meeting of the Members within thirty (30) days after filing the action, for the purpose of discussing the action taken by the Board.

Before commencing an action for damages against a builder of the Project based upon a claim for defects in the design or construction of the Project, the Association shall comply with the requirements of Civil Code § 1375. If, and to the extent that, there is any inconsistency between this section 5.2K and applicable provisions of the California Civil Code and/or the California Code of Civil Procedure pertaining

to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

**L. Other Powers:** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

**5.3 Commencement of Association's Duties and Powers:** Until incorporation of the Association, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, the Association shall assume all duties and powers.

## **ARTICLE 6 ARCHITECTURAL CONTROL**

**6.1. Purpose of Architectural Controls:** The purpose and intent of this Article is to empower the Association to preserve property values within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and the Architectural Control Committee shall operate pursuant to the following guidelines:

**A.** During the period of initial sales, through transition of control from Declarant to the Members of the Association, the emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Project.

**B.** Following initial sell-out, the emphasis shall be upon keeping out of the Project what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective then becomes to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project. The restrictions are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and are uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members, and shall prohibit material variances from the design of the Project as approved by City in original design review and approval of the Project by the City.

**6.2. Requirement for Approval of Plans:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board.

**A.** Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation, including consistency with the design of the Project as approved by City in original design review and approval of the Project by the City.

**B.** No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications.

**C.** Solar units shall be permitted if such units lay flat on the roof.

**D.** No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence or to paint the interior of his residence any color desired.

**6.3. Architectural Control Committee Membership:** The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final Public Report for the Project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth anniversary of the issuance of the final Public Report for the Project, whichever first occurs. After one (1) year from the date of the issuance of the original Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all of the Lots in the development have been sold or until the fifth anniversary date of the issuance of the final Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the Architectural Control Committee Members. Members appointed to the Architectural Control Committee need not be Members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto.

**6.4. Architectural Control Committee Action:** In the event the Committee fails to approve or disapprove plans and specifications in writing within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee and the Board, and the members thereof, harmless from any and all liability arising out of such approval.

**6.5. Landscaping:** No landscaping or other physical improvements or additions shall be made to any decks, balconies, patios or yards or portions of Lots which are visible from the street until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

**6.6. Governmental Approval:** Before commencement of any alteration or improvements, the Owner shall comply with all appropriate governmental laws and regulations, including that there shall be no material variances from the design of the Project as approved by City in original design review and approval of the Project by the City. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

## ARTICLE 7 USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Lot in the Project is subject to the following:

**7.1. Use of Lot:** No Lot shall be occupied and used except for residential purposes by the Owners, or other permitted occupants under this Declaration and the Leisure Town Development Declaration, and their social guests, except that Declarant, its successors or assigns, may use the Project for a model homesite or sites, and display and sales/construction office during construction until the last Lot is sold by Declarant, or, where Declarant elects to retain one (1) or more Lots as an investment, until three (3) years from the date of closing of the first sale in the latest annexed phase of the Project, whichever occurs first. A Lot may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use does not interfere with the quiet enjoyment by other Lot Owners of their Lots and does not include visiting clients, and such use is not visible from the streets of the Project. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any Lot at any time as a residence, either temporarily or permanently.

**7.2. Senior Citizen Housing Development.** All Lots and buildings in the Project have been constructed as a "Senior Citizen Housing Development as defined by California Civil Code section 51.3. All residents in the Project must be a "Qualifying Resident", meaning a person 55 years of age or older as specified in section 51.3 (b)(1) of the California Civil Code or a "Qualified Permanent Resident" meaning a person who meets the requirements specified in sections 51.3 (b)(2) or 51.3(b)(3) of the California Civil Code, or a "permitted health care resident" as specified in section 51.3 (b)(7) of the California Civil Code. Temporary residency of a guest of a qualified permanent resident shall be permitted by a person less than 55 years of age for a period of time not less than 60 days in any year.

**7.3. Number of Residents.** The number of residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom per residence shall be permitted as permanent residents. A "permanent resident" means any person residing on the Lot more than sixty (60) days out of any twelve (12) consecutive month period.

**7.4. No Health Care Facilities.** No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project, unless permitted by law or ordinance which preempts this restriction.

**7.5. No Family Day Care Center.** No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

- (1) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;
- (2) Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- (3) Abide by and comply with all of the Association's Rules;
- (4) Supervise and be completely responsible for children at all times while they are within the project;

(5) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

**7.6. Nuisances:** No noxious, illegal, or seriously offensive (to a reasonable person) activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot.

**7.7. Vehicle Restrictions and Towing:** No trailer, camper, mobile home, recreational vehicles, commercial vehicle, recreational vehicle, or truck having carrying capacity of greater than 3/4 ton, or van having seating capacity in excess of eight (8) persons or which is too large to fit within the Owner's garage, boat, inoperable automobile, or similar equipment shall be permitted to be parked or remain upon any area within the Project. Permitted vehicles which are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or unreasonably polluting vehicles shall be operated on the Project. No unregistered or unlicensed motor vehicles shall be operated or parked upon the Project. The occupants of any one Lot shall not have or park more than three (3) permitted vehicles on the Project at any one time. Garage space of garages shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking space for two passenger motor vehicles number of vehicles.

**7.8. Commercial Activity:** No business, professional, or commercial activity of any kind shall be conducted on any Lot, except as provided in section 7.1.

**7.9. Signs:** No signs shall be displayed to the public view on any Lot or on any portion of the Project except such signs as are approved by the Board or committee appointed by the Board. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed, provided the design, dimensions and locations are reasonable. Only one (1) such sign shall be permitted on any Lot.

**7.10. Animals:** No animals of any kind shall be raised, bred, or kept on any Lot, with the exception of trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons who occupy or are visiting occupants of the Lot, except no more than two (2) usual and ordinary household pets such as dogs or cats provided they are not kept, bred, or maintained for any commercial purposes, and are kept under reasonable control at all times. No Owner shall allow his or her dog to outside the fenced in areas of a Lot except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found outside of the Owner's Lot in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or the County of Solano, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling the Project, or any portion thereof, and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets. An Owner shall prohibit any animal on his Lot from making disturbing noises heard from any structure on any other Lot between the hours of 10:00 PM to 7:00 AM. An owner in violation of this section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner.

**7.11. Garbage and Refuse Disposal:** All rubbish, trash and garbage shall be regularly removed from the Lots, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots and the streets. No toxic or hazardous materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. Each Owner shall be responsible for removal of trash, garbage



and recycling from his Lot. Containers for trash, garbage and recycling shall not be left outside of their storage areas except on collection days.

**7.12. Radio and Television Antennas:** No antennas, towers, poles, satellite dishes or any other structure to be used for the purpose of transmitting or receiving radio, television or related signals shall be installed on the Project so as to be visible to the public view or to another Owner. Subject to applicable laws, no Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna or satellite dish without the consent of the Board. In considering whether to approve applications, the Board shall act in accordance with the requirements of § 1376(a) of the Civil Code and any other applicable laws, and shall consider and give great weight to considerations of aesthetics and uniformity of appearance and the requirements of any applicable laws. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code §1376 and FCC [Federal Communications Commission] regulations. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with California Civil Code §1376 and FCC regulations.

**7.13. Basketball Standards/Sports Apparatus:** No basketball standard or fixed sports apparatus shall be attached to the exterior surface of any residence or garage, nor shall any portable apparatus for basketball be permitted on any Lot. The purpose of this restriction is to maintain uniformly high aesthetic standards, and to preserve the quiet enjoyment of the respective Lots by the Owners thereof.

**7.14. Drapes:** No portion of any drapes, blinds or curtains which are installed on the interior of any residence which may be seen from outside such residence shall be of a color, texture or material which, in the reasonable opinion of the Board or Architectural Control Committee, is inharmonious with the exterior appearance of all residences.

**7.15. Clothes Lines:** No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes, that are visible from the street. No draping of towels, carpets, or laundry over exterior railings shall be allowed.

**7.16. Power Equipment and Car Maintenance:** No power equipment, hobby shops, or car maintenance (other than emergency work), or boat maintenance shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld and, in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

**7.17. Leasing of Lots:** No Owner shall be permitted to rent or lease the Residence on his or her Lot. All Residences shall be occupied by Owners who are Qualifying Residents or Qualified Permanent Residents, or guests of a Qualifying Resident or Qualified Permanent Resident pursuant to the provisions of section 7.2.

**7.18. Flags, Pennants, Banners, Etc.:** There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except the sales office) that would be visible from the streets or the other Lots, except under reasonable Rules adopted by the Board or the Architectural Control Committee, and except as expressly permitted by statute.

**7.19. Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept on any Lot or in any improvements constructed in any Lot that will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Lot or that is held by the Association, or which would be in violation of any law.

**7.20. Owner's Right and Obligation to Maintain and Repair:** Except for those portions of the Project which the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair his Lot and all landscaping thereon, keeping the same in good condition. The Lot Owners shall maintain the fences that enclose their Residence Yards. Where a fence is on the boundary between Lots, the Lot Owners of those Lots shall have joint responsibility for maintenance and repair of the fence and shall share the costs of such maintenance and repair.

In the event an Owner of any Lot shall fail to maintain his Lot, the Residence, the Residence Yard and any other the improvements thereon as required herein, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the Lot and perform the necessary maintenance. The cost of such maintenance shall immediately be paid to the Association as a Reimbursement Charge by the Owner of such Lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

**7.21. Maintenance of Adjoining Masonry Wall:** The following shall apply to the maintenance of the masonry wall along the Lots 1-15, 74-76 that back up to the adjacent Diamond Grove subdivision:

A. Climbing plants such as ivies, passion vines, Virginia creeper, wisteria, and creeping fig vines shall not be planted on the masonry wall. These plants can damage the wall. Acceptable climbing plants are trumpet vines, bower vines, potato vines, and any variety of jasmine vines. The preferred method of growing vines to cover the wall is to use a lattice or trellis of some kind, spaced 10 to 12 inches away from the wall.

B. A raised planter bed abutting the masonry wall shall not exceed a height of 18 inches above the top of the wall's foundation. To prevent moisture damage and protect the integrity of the masonry block wall, a vapor barrier shall be installed between the wall and the planting soil. The vapor barrier shall be a product equal to or better than either Thuroseal, Bituthene System 4000 by Grace Construction Products or Deep Root Water Barrier.

C. No trees shall be planted within seven (7) feet of the masonry block wall, to prevent damage from roots.

D. There shall be no structures or objects other than plants attached to the wall. The wooded side yard fence shall abut the wall, but may not be attached to the wall.

E. Any damage to the masonry block wall caused by non-compliance to these restrictions or negligence of the Owner of the Lot, or lessees, guests, invitees, contract purchasers, and/or licensees of the Owner shall be the Owner's responsibility.

F. In the event that the wall needs repair or maintenance, the Diamond Grove Home Owner's Association ("DGHOA") or its designee shall be allowed to enter the Hampton Park yards to repair or maintain the wall. The DGHOA shall only be allowed to enter the Hampton Park yards, if the following conditions are met:

(1) Non-emergency Repair or Maintenance

(a) The DGHOA or its Designee shall provide written notice to the Lot Owner.

(b) The written notice shall include the nature of the repair/maintenance, date and time of the repair/maintenance, and the duration of the repair/maintenance.

(c) The lot owner shall have a 21-day notice before any work is started. The lot owner shall respond to the notice in a reasonable amount of time.

(d)The DGHOA or its Designee is accessing the lot for the purpose of repairing/maintaining the wall, shall be the responsibility of the DGHOA or its Designee.

(e) Any damage to a home, yard or structure in Hampton Park while the DGHOA or its designee is accessing a Lot for purpose of repairing or maintaining the wall shall be the responsibility of DGHOA or its designee.

(2) Emergency Repair or Maintenance:

(a)The DGHOA or its Designee shall provide notice to the lot owner. The lot owner shall respond to the notice in a reasonable amount of time.

(b)The notice shall include the nature of the repair/maintenance, date and time of the repair/maintenance, and the duration of the repair/maintenance.

(c)In the event that the property owner is not home or is on vacation, the DGHOA or its Designee shall contact the Leisure Town Home Owner's Association prior to entering the lot for the purpose of wall repairs.

(d)The DGHOA or its Designee shall be granted access to the wall through the Hampton Park yard.

(e)Any damage to the Hampton Park home, yard, or structures, while the DGHOA or its Designee is accessing the lot for the purpose of repairing/maintaining the wall, shall be the responsibility of the DGHOA or its Designee.

This section 7.21, which addresses the Diamond Grove masonry wall, shall not be modified or deleted without the written approval of the Diamond Grove Home Owner's Association.

**ARTICLE 8**  
**INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION**

**8.1. Insurance:** The Association shall obtain and maintain the following insurance:

**A.** a hazard policy insuring all improvements, equipment, and fixtures owned by the Association, unless the Board determines, in its sole discretion, that such insurance is not necessary.

**B.** if obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the activities of the Association. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code § 1365.7;

**C.** workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

**D.** fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

**E.** officers and directors liability insurance in the minimum amounts required by California Civil Code § 1365.7;

F. insurance against liability for non-owned and hired automobiles, and such other insurance as the Board in its discretion considers necessary or advisable;

## **8.2. Association Insurance Provisions and Requirements:**

**A. Amount, Term and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which is within the discretion of the Board as provided by § 8.1a, above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claim from Association funds, unless insufficient funds are available to the Association from the Association's accounts for from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with sections 4.3.B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

**B. Endorsements.** The following endorsements should be included, if applicable, in the Association's insurance policies:

- (1) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");
- (2) inflation guard coverage;
- (3) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (4) replacement cost endorsement; and
- (5) primary coverage endorsement.

**C. Representation for Claims.** Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**D. Waiver of Subrogation.** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, and the Owners and occupants of the Lots (including Declarant) and mortgagees; and cross-liability and severability of interest coverage insuring each insured against liability to each other insured. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, and the Owners and occupants of the Lots and mortgagees; and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

**E. Review of Policies.** The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**F. Separate Insurance.** Each Owner shall separately insure his Lot against loss by fire or other casualty. The insurance maintained by the Association does not cover the residences or the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Lots. Each Owner shall obtain and maintain, at the Owner's sole expense, fire and casualty coverage as may be required by any mortgagee of the Lot and in no event less than the amount and type of fire and casualty insurance required to be obtained and maintained as determined by the Board, and with respect to amount, the coverage shall be for one hundred percent (100%) of current replacement cost of all improvements on his Lot. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant, and the mortgagees of such Lot.

**G. Copies of Policies.** The Association shall make available to all Members a copy of the Association's policy.

**H. Limitation on Liability.** The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the insurance will not be obtained or renewed.

**I. Policies and Procedures Regarding the Filing and Processing of Claims.** The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Drainage Swale improvements or any other matters covered by insurance maintained by the Association.

### **8.3. Damage or Destruction:**

**A.** If any improvements or landscaping on any Lot are damaged or destroyed by fire or other casualty, the Owner of such Lot shall repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Architectural Control Committee.

**B.** If improvements within the Drainage Swales are damaged or destroyed by any casualty, the improvements shall be repaired or reconstructed by the Association substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction.

**C.** If the Association undertakes any work which section 7.20 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work as a Reimbursement Charge and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the residence or the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed, as set forth in section 4.10.

**8.4. Condemnation:** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If all or any part of the Drainage Swales are taken by eminent domain, the award shall be disbursed to the Association.

## ARTICLE 9 GENERAL PROVISIONS

**9.1. Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**9.2. Invalidity of Any Provision:** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

**9.3. Term:** The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

**9.4. Amendments:** Prior to close of escrow on the sale of the first Lot, Declarant may amend this Declaration. After sale of the first Lot, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association, and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of Solano County. No amendment shall adversely affect the rights of the holder of any mortgage of record prior to the recordation of such amendment.

**9.5. Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot made in good faith and for value, but all of those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in this Declaration to the contrary, First Lenders shall have the following rights:

**A. Copies of Project Documents:** The Association shall make available to Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing requested documents which may not exceed the reasonable cost to prepare and reproduce them.

**B. Audited Statement:** Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year,

free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

**C. Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of: (1) any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable; (2) any default in performance of obligations under the Project Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a first mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 9.5.D. The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 9.9.

**D. Consent to Action:**

(1) Except as provided by statute or by other provision of the Project Documents in case of substantial destruction or condemnation of the Project:

(a) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a planned unit development project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgage Lot is required;

(b) the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of the Lots subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Project Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair, and replacement under this Declaration; (iv) responsibility for maintenance and repairs; (v) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (vi) hazard or fidelity insurance requirements; (vii) imposition or any restrictions on the leasing of Lots; (viii) imposition of any restrictions on an Owner's right to sell or transfer his Lot; (ix) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; or (x) any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(c) an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested.

(2) unless the holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each first mortgage or deed of trust owned), or two-thirds (2/3) of the Owners (other than Declarant) of the individual Lots in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Project, or abandon, partition, subdivide, encumber, sell or transfer property owned directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause) except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain; or

(b) change the method of determining the obligations, Assessments or dues or other charges which may be levied against an Owner; or

(c) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Drainage Swales; or

**E. Right of First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or similar restriction.

**F. Contracts:** Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any such agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board to Lot purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

**G. Reserves:** Association dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and the Assessments therefor shall be payable in regular installments rather than by Special Assessments.

**H. Priority of Liens:** Any First Lender who obtains title to a Lot pursuant to the remedies provided in the Mortgage or Foreclosure of the mortgage will not be liable for such Lot's unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims which accrue prior to the acquisition of title to such Lot by the Mortgagee (except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all project Lots including the mortgaged Lot, and except for assessment liens recorded prior to the Mortgage).

**I. Distribution of Insurance or Condemnation Proceeds:** No Owner or any other party shall have priority over any rights of First Lenders pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards.

**9.6. Limitation of Restrictions on Declarant:** Declarant is undertaking the work of construction of a planned development and incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of said Lots is essential to the establishment and welfare of the Project as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:



A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Lots owned by others), such structures as may be reasonable and necessary for developing the Project as a residential community and disposing of the same by sale, lease or otherwise; or

C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing the work and of establishing a plan of residential ownership and of disposing of the Project in Lots by sale, lease or otherwise;

D. Prevent Declarant from maintaining or displaying such signs, pennants and flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof; or

E. Subject Declarant to the architectural control provisions of Article 6 for the construction of any residence or other improvement on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project.

So long as Declarant, or its successors and assigns, owns one (1) or more of the Lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration.

**9.7. Termination of Any Responsibility of Declarant:** In the event Declarant shall convey all of its rights, title and interest in and to the Project to any successor Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

**9.8. Owners' Compliance:** Each Owner, or other occupant of a Lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

**9.9. Notice:** Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary.

**9.10. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Drainage Swale Improvements:** Where the Project includes Drainage Swale improvements which have not been completed prior to the close of escrow on the sale of the first Lots, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Drainage Swale improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Drainage Swale improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Drainage Swale improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the question of satisfaction of the Conditions for exoneration or release of the security shall, at the request of either party, be submitted to arbitration pursuant to section 9.13 of this Declaration.

**9.11. Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments:** Where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to pay assessments on Lots owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any of Declarant's assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay assessments upon unsold Lots as set forth in Title 10 Cal Code of Regs. § 2792.9, the escrow holder holding the bond shall return the bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all Regular and Special assessments levied by the Association against Lots owned by the Declarant and that [2] 80% of the Lots in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant

within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the bond a demand for remittance of the bond or a portion thereof, or the proceeds thereof to the escrow holder of the bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular Assessments or Special Assessments which have been levied by the Association against Lots owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the bond, the return or remittance of the bond and other disposition of matters set forth in said escrow instructions with respect to the bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to Arbitration as provided in Section 9.13.E hereof.

**9.12. Fair Housing.** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of his Lot to any person of a specified race, sex, age, marital status, color, religion, ancestry, physical handicap, or national origin.

**9.13. Alternative Dispute Resolution:** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

**A. Design or Construction Claims.** Actions by the Association [or any Owner of a Lot in the Project] pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, such claim shall be resolved and administered in accordance with Civil Code sections 1375 and 1375.05. If permitted by the then applicable law, such claims shall be submitted to Judicial Reference, as set forth in section 9.13.E below.

**B. Notice of Intent of Association's Actions.** The Board shall provide, one hundred twenty (120) days advance written notice of the Board's intent to initiate the prosecution of any civil action stating the nature and basis of the claim, to every Member of the Association and every entity or person who is a prospective party to the civil action, provided that such notice can be given more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and such notice can be given without prejudice to the Association's right to enforce the Project Documents, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce Assessment obligations.

**C. Claims for Declaratory Relief or Enforcement of Project Documents.** Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce the Project Documents, or for declaratory relief or injunctive relief to enforce the Project Documents in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1354(b) of the California Civil Code.

(1) Immediately after initiating the prosecution or defense of any such civil action, the Board of an Association, or any Owner who seeks such relief, shall make a reasonable effort, in good

faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; providing an opportunity to cure any alleged defect in the Project or facilities which is the basis for the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. The Board is authorized to consider diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration and is authorized to agree to participate and to participate fully and in good faith in the resolution of any such civil action through any alternative dispute resolution proceedings, including, but not limited to, mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

(2) The Board shall comply with the requirements of California Civil Code Section 1354(i) by providing Members of the Association annually with a summary of the provisions of California Civil Code Section 1354, including the following language: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents."

**D. Arbitration.** If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) The costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator, with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) A neutral and impartial individual(s) shall be appointed by the Judicial Arbitration and Mediation Services ("JAMS") to serve as arbitrator, with the arbitrator to be appointed within a reasonable period of time, which in no event shall be more than 60 days from the administrator's receipt of a written request from a party to arbitrate the claim or dispute. In selecting the arbitrator, the provisions of §1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the Code of Civil Procedure;

(3) Venue of the arbitration to be in the county where the subdivision is located, unless the parties agree to some other location;

(4) The arbitration shall commence in a prompt and timely manner in accordance with (i) the rules of the arbitration, or if the rules do not specify a date by which arbitration is to commence, then (ii) a date was agreed by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator;

(5) The arbitration shall be conducted in accordance with rules and procedures JAMS;

(6) The arbitration shall be concluded in a prompt and timely manner;

(7) The arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; provided, however, that there shall in no event be any award of punitive damages.

(8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(9) The Arbitration shall be binding.

**E. Judicial Reference for Certain Disputes.** For any action by the Association or any Owner of a Lot in the Project against the Declarant or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code section 1375 and Civil Code section 1375.05, such claim shall be submitted to Judicial Reference as hereinafter provided:

(1) Subject to compliance with the alternative dispute resolution ("ADR") requirements set forth in Section 1354 of the California Civil Code, as same may be amended from time to time, for those matters that are subject to Section 1354, all other disputes between or among the Association, any Owners and/or the Developer Parties (excepting disputes with the Declarant for delinquent Assessments, and disputes with Declarant regarding the releases or exoneration of completion bonds for the Association Property) shall be resolved in accordance with the provisions of subsection (2) below.

(2) All unresolved disputes under subsections (1) above shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The fee to initiate the proceedings shall be advanced by Declarant, but the parties ultimately shall share the fees and costs for the judicial reference proceeding as determined by the Referee.

(3) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to the judicial reference, then any fee to initiate the judicial reference shall be paid by Declarant, provided, however, that the cost of the judicial reference shall ultimately be borne as determined by the Referee;

(b) The proceedings shall be heard in Solano County;

(c) The Referee must be a neutral and is interested party who is a retired judge or a licensed attorney with at least ten (10) years of experience in relevant real estate matters;

(d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The Referee may require one or more pre-hearing conferences;

(f) 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;

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

(h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; and

(j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the judicial reference; provided, however, that there shall in no event be any award of punitive damages.

(4) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and agree that they are waiving their right to a jury trial.

**9.14. FHA/DVA Approval:** So long as the Federal Housing Administration (FHA) or the Department of Veterans Affairs (DVA) has jurisdiction over any loan secured by a deed of trust on any lot in the Project, and as long as there is a Class B membership, the following actions will require the prior approval of the FHA or the DVA: Annexation of additional properties not described on Exhibit A or any amendment to this Declaration.

**9.15. Number; Gender.** The singular and plural number and the masculine, feminine and neuter gender shall each include the other where the context requires.

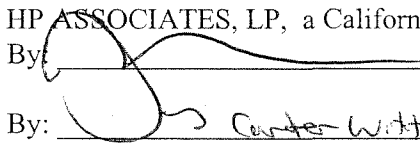
**9.16. City Rights.** If the Declarant, or any successor to Declarant, any Owner or the Association refuses, neglects or fails to perform the obligations set forth in Section 5.1A of this Declaration, the City may enforce the obligations set forth in Section 5.1A of this Declaration as a third party beneficiary or as a covenant running with the land and recover the cost of such activity, including reimbursement for staff time and attorney's fee, from the responsible party.

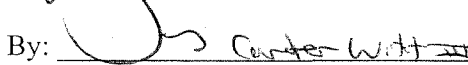
**9.17. Leisure Town Development.** The Lots in the Project are meant to be part of the Leisure Town Development and have the use and benefit of the common facilities and common areas of the Leisure Town Development as set forth and described in Amendments to Declaration of Restrictions, Conditions and Covenants recorded by Leisure Town Home Association on January 3, 1994 in Official Records of Sonoma County, as Instrument 1994-00000384 ("Leisure Town Development Declaration") and the Amendment to Declaration and Declaration of Annexation Leisure Town recorded by Leisure Town Home Association on November 12, 2002 in Official Records of Sonoma County, as Instrument 2002-163306. In addition to any Assessments payable under this Declaration, each Lot shall be subject to the assessments levied against the Lots by the Leisure Town Home Association under the Leisure Town Development Declaration.

Subject to acceptance in writing of such delegation by the Leisure Town Home Association, upon a vote or written consent of a majority of the total voting power of the Association, the Owners may delegate and assign to the Leisure Town Home Association, the maintenance obligations of the Project Association described in Section 5.1 of this Declaration, and any other rights and duties of the Project Association stated in this Declaration and the rights of the Project Association to assess and collect assessments on the Lots in the Project as set forth in Article 4 of this Declaration. Such delegation may be terminated by and upon a vote or written consent of a majority of the total voting power of the Association or at the election of Leisure Town Home Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 16 day of DECEMBER, 2002

HP ASSOCIATES, LP, a California limited partnership

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Its: President \_\_\_\_\_

**ADD APPROPRIATE ACKNOWLEDGMENTS**

# CALIFORNIA

## ALL-PURPOSE

### ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

COUNTY OF CONTRA COSTA )

On 16 DECEMBER 2002 before me, JO-ANN DALY LEE, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, J. CARTER WITT III

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

WITNESS my hand and official seal.

JoAnn

(SEAL)

NOTARY PUBLIC SIGNATURE



### OPTIONAL INFORMATION

TITLE OR TYPE OF DOCUMENT HAMPDEN PARK CC & R's

DATE OF DOCUMENT 12/16/02 NUMBER OF PAGES 33

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_



## **EXHIBIT A**

### **Project Phases**

#### **Phase 1:**

LOTS 1-22; inclusive, and 26-32, inclusive, and Parcels W and X as shown on the Map ["Final Map for Hampton Park," filed for record in the Office of the Recorder of the County of Solano, State of California, on September 24, 2002, in Book 74 of Maps, page 53].

#### **Annexation Property:**

#### **Phase 2:**

LOTS 33-56, inclusive, as shown on the Map.

#### **Phase 3:**

LOTS 57-90, inclusive, and Parcels Y and Z as shown on the Map.

#### **Phase 4:**

LOTS 23-25, inclusive, as shown on the Map.

Declarant shall be entitled to change the lots within any of the Phases by filing a supplemental declaration to this Declaration that changes such phasing, without the consent of any of the Owners.

**EXHIBIT B**  
**Maintenance Plan**

The area designated herein as the Drainage Swales shall be maintained pursuant to this Maintenance Plan.

- “Drainage Swale” shall mean and refer to Lots W, X, Y and Z as shown and described on the Map, which Drainage Swales have been dedicated as easements and conveyed by Declarant to the Association, subject to the express condition that the Association provide on going maintenance of the Drainage Swales pursuant to the provisions of the approval of the Map by the City and the terms of this Maintenance Plan.
- The Drainage Swales are to be installed and vegetated as a natural open space area with native riparian vegetation by the Declarant. After installation and planting of the native riparian vegetation, the Drainage Swales are to be left and maintained in its natural state.
- The Drainage Swales shall be regularly inspected and siltation removed when required in environmentally non-intrusive manner at least once every 3 years.
- There shall be regular maintenance of the landscaping within the Drainage Swales, brush control at perimeter of the Drainage Swales and maintenance of a fire break at perimeter of the Drainage Swales.

When Recorded Return To:  
Hanna & Van Atta  
525 University Avenue, Suite 705  
Palo Alto, California 94301

Recorded in Official Records.  
Solano County  
Doc#: 200300058106  
4/15/2003 8:00 AM

5037-000 TP

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AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
THE HAMPTON PARK DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HP ASSOCIATES, LP, a California limited partnership, (the "Declarant") as owner of all of that real property located in the City of Vacaville ("City"), County of Solano, State of California, more particularly described on the map entitled "Final Map for Hampton Park," filed for record in the Office of the Recorder of the County of Solano, State of California, on September 24, 2002, in Book 74 of Maps, page 53, and as the Declarant of the Hampton Place Declaration of Covenants, Conditions & Restrictions, filed for record in the Official Records of Solano County Recorder recorded on December 20, 2002 as Document No. 200200167548 ("Declaration"), hereby amends Section 7.17 of the Declaration as follows:

1. Section 7.17 of the Declaration is revised to read as follows:

0.1. **Leasing of Lots:** No Owner shall be permitted to rent or lease the Residence on his or her Lot except to Qualifying Residents or Qualified Permanent Residents. All Residences shall be occupied by Owners who are Qualifying Residents or Qualified Permanent Residents, or guests of a Qualifying Resident or Qualified Permanent Resident pursuant to the provisions of section 7.2. No Owner shall be permitted to lease his Lot for any period less than thirty (30) days. Any lease shall be in writing and shall be subject in all respects to the provisions of the Declaration, the Bylaws and all Rules adopted by the Board. All Owners leasing their Lots shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenant's family occupying such Lot and of the address and telephone number where such Owner can be reached.

The Declarant, as the owner of all of the real property subject to the Declaration, hereby makes this Amended Declaration this 2<sup>nd</sup> day of April, 2003.

HP ASSOCIATES, LP, a California limited partnership

By: \_\_\_\_\_

By: \_\_\_\_\_

As: \_\_\_\_\_

J. Cantelmo II

President - Silvercreek Managing Member

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

)  
) ss.  
)

On this 02 day of April, 2003, before me, JO-ANN DALY LEE,  
a notary public for the state, personally appeared J. CARTER WITTE III,  
known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person(~~s~~) whose name(~~s~~) is/~~are~~  
subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or  
the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.



*JoAnn*

Notary Public, State of California