

**RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:**

THE ROCK LAW FIRM  
Attn: Erica L. Brynes, Esq.  
3701 Sacramento Street, #455  
San Francisco, California 94118

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
PORTOFINO OF VACAVILLE HOMEOWNERS ASSOCIATION**

**NOTICE OF RENTAL RESTRICTION:**

**THIS DOCUMENT CONTAINS RESTRICTIONS THAT MAY LIMIT YOUR ABILITY  
TO LEASE YOUR LOT.**

Please note that Portofino of Vacaville Homeowners Association has a twenty-five percent (25%) rental cap. Written approval of the Board is required to lease a Lot. You are directed to review the restrictions contained in Article 5 of these CC&Rs.

## TABLE OF CONTENTS

Page

### ARTICLE 1

#### DEFINITIONS

1.1 Additional Charges	2
1.2 Annual Assessments	2
1.3 Architectural Control Committee	2
1.4 Articles	3
1.5 Assessments	3
1.6 Association	3
1.7 Attached Residences	
1.8 Board of Directors	3
1.9 Bylaws	3
1.10 Capital Improvement	3
1.11 Civil Code	3
1.12 Common Area	3
1.13 County	3
1.14 Courtyards	3
1.15 Courtyard Lots	3
1.16 Declaration	3
1.17 Development	3
1.18 Eligible Holder	4
1.19 Governing Documents	4
1.20 Improvements	4
1.21 Institutional Mortgagee	4
1.22 Lot	4
1.23 Maintenance	4
1.24 Majority of a Quorum	4
1.25 Map	4
1.26 Member	5
1.27 Member in Good Standing	5
1.28 Mortgage	5
1.29 Mortgagee	5
1.30 Owner	5
1.31 Party Wall/Party Fence	5
1.32 Reimbursement Assessment	5
1.33 Repair	5
1.34 Replacement	5
1.35 Residence	5
1.36 Resident	5
1.37 Rules	5
1.38 Special Assessment	5
1.39 Total Voting Power	5

## ARTICLE 2

<b>HOMEOWNERS ASSOCIATION</b>	5
2.1 Management and Operation	5
2.2 Membership	5
2.3 Voting	6
2.4 Board of Directors	6
2.5 Association Rules	6
2.6 Assessments	7
2.7 Acquisition of Property	7
2.8 Capital Improvements	7
2.9 Sale or Transfer of Association Property	7
2.10 Easements to Owners	7
2.11 Safety and Security	7

## ARTICLE 3

<b>OWNERSHIP RIGHTS AND EASEMENTS</b>	7
3.1 Common Area	7
3.2 Owners' Non-Exclusive Easements of Enjoyment	8
3.3 Acquisition of Ownership Interest	8
3.4 Delegation of Rights of Use and Enjoyment	8
3.5 Common Area Construction	9
3.6 Mechanic's Liens	9
3.7 Easements on Map	9
3.8 Church Easement Rights (Parcel E)	9
3.9 Easements in General	10
3.10 Utility Easements	10
3.11 Easements of Encroachment	10
3.12 Easements Granted by the Board	11
3.13 Partition Prohibited	11
3.14 Drainage Easement	11
3.15 Maintenance and Repair Easement	11
3.16 Authority Over Common Area	12
3.17 Party Fences	12
3.18 Notice of Airport in Vicinity	13
3.19 Noise Transmissions	13

## ARTICLE 4

<b>USE RESTRICTIONS</b>	14
-------------------------	----

4.1 Residential Use	14
4.2 Rental of Lots	14
4.3 Restriction on Businesses	14
4.4 Child Care Facilities	14
4.5 Offensive Conduct, Nuisances, Noise	15
4.6 Use of the Common Area	15
4.7 Hazards	15
4.8 Requirement of Architectural Approval	15
4.9 Solar Energy Systems	15
4.10 Sports Apparatus	15
4.11 Mailboxes and Exterior Newspaper Tubes	16
4.12 Outside Drying and Laundering	16
4.13 Satellite Dishes and Antennas	16
4.14 Animals	16
4.14.1 Limitation on Pets	16
4.14.2 Owner's Responsibility for Pets	16
4.14.3 Pet Rules	17
4.14.4 Right to Prohibit	17
4.15 Subdivision or Merger of Lots	17
4.16 Construction Materials, Construction Debris	17
4.17 Machinery and Equipment	17
4.18 Signs, Banners, Flags	17
4.19 Courtyard Parking	18
4.20 Prohibited Vehicles	18
4.21 Parking Enforcement	18
4.22 Garages	19
4.23 Window Coverings	19
4.24 Outbuildings	19
4.25 Mineral Exploration	19
4.26 Drainage	19
4.27 Driveways	19
4.28 Drilling	19
4.29 Sound Transmissions	20
4.30 Compliance with Law	20

## ARTICLE 5

<b>RENTING OR LEASING</b>	<b>20</b>
5.1 Requirements for Renting	20
5.2 Rental of Entire Lot	21
5.3 No Subletting or Short Term Rentals; Roommates	21
5.4 Restriction on Number of Lots Leased or Rented	21
5.5 List of Rented Lots	21
5.6 Written Application for Permission to Rent; Priority List	21
5.6.1 Review of Application to Rent	22

5.6.2 Reconsideration of Denied Application or Request for Hardship Waiver	22
5.6.3 Duration of Authorization to Rent; No Subletting	22
5.6.4 Decision of Board Conclusive	23
5.7 Implementation	23
5.8 Association as Third Party Beneficiary	23
5.9 Assignment of Rents as Security for Payment of Liens	23
5.10 Owner Responsible for Tenant's Actions; Indemnification of Association	23
5.11 Owner Prohibited From Using Common Facilities While Lot Rented	23
5.12 Time-Share Arrangements Prohibited	23

## **ARTICLE 6**

<b>MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES</b>	<b>23</b>
6.1 Owner's Maintenance Responsibilities	23
6.2 Owner's Landscaping Responsibilities	23
6.3 Attached Residences Shared Maintenance Responsibilities	23
6.3.1 Definition of Shared Improvements	23
6.3.2 Shared Improvement Maintenance Responsibilities	23
6.3.3 Notice and Cooperation	23
6.3.4 Allocation of Costs	23
6.4 Good Neighbor Fences	23
6.5 Mailbox Maintenance	23
6.6 Dispute Resolution	23
6.7 Association's Maintenance Responsibilities	23
6.7.1 Common Area	23
6.7.2 Courtyards	23
6.7.3 Landscaping	23
6.8 Trash Removal	23
6.9 Cooperation and Access	23
6.10 Reimbursement and Indemnification	23

## **ARTICLE 7**

<b>ARCHITECTURAL CONTROL</b>	<b>26</b>
7.1 Architectural Approval Required	26
7.1.1 Improvements	
7.1.2 Satellite Dishes and Antennas	
7.1.3 Equipment on Roof or Exterior Walls	
7.2 Establishment of Architectural Control Committee	
7.2.1 Members	
7.2.2 Board May Serve as ACC	
7.2.3 Vacancies	
7.2.4 Duties	
7.2.5 Meetings, Minutes, Reimbursement	

7.3 Architectural Rules	
7.4 Application	
7.5 Fees	
7.6 Decisions on Architectural Applications	
7.7 Grant of Approval	
7.8 Timing and Form of Approval	
7.9 Appeals	
7.10 Commencement	
7.11 Completion	
7.12 Inspection of Completed Work; Non-Compliance	
7.13 Non-Waiver	
7.14 Estoppel Certificate	
7.15 Liability	
7.16 Compliance With Governmental Requirements	31

## ARTICLE 8

<b>ASSESSMENTS AND LIENS</b>	31
8.1 Covenant of Owner	31
8.1.1 Association's Power to Collect	31
8.1.2 Each Assessment Is a Separate Obligation	31
8.1.3 Obligation Runs With the Land	31
8.1.4 Owner's Liability After Transfer	32
8.2 Creation of Lien	32
8.2.1 Continuing Lien	32
8.3 Purpose of Assessments	32
8.4 Authority of the Board	32
8.5 Association Funds	32
8.6 Annual Assessments	33
8.6.1 Calculation of Estimated Requirement	33
8.6.2 Allocation of Annual Assessment	33
8.6.3 Surplus Funds	33
8.6.4 Increases in Annual Assessment	33
8.7 Special Assessments	33
8.7.1 Purpose of Special Assessments	33
8.7.2 Allocation of Special Assessments	34
8.7.3 Approval of Special Assessments	34
8.8 Notice of Assessment Increases	34
8.9 Reimbursement Assessments	34
8.10 Failure to Fix Assessments	34
8.11 No Offsets	34
8.12 Delinquent Assessments	34
8.13 Power of Sale	34
8.14 Remedies Cumulative	35
8.15 Certificate of Satisfaction and Release of Lien	35

8.16 Priority	35
8.17 Waiver of Exemptions	36

## **ARTICLE 9**

<b>ENFORCEMENT</b>	36
9.1 Violations as Nuisance	36
9.2 Violation of Law is a Violation of Declaration	36
9.3 Owners' Responsibility for Conduct of Others and Damages	36
9.4 No Avoidance	37
9.5 Rights and Remedies of the Association	37
9.5.1 Rights and Remedies Are Cumulative	37
9.5.2 Imposition of Sanctions	37
9.5.3 Continuing Violations	37
9.6 Inadequacy of Legal Remedy	37
9.7 Limitation on Disciplinary Rights	37
9.8 Disciplinary Rules	38
9.9 Investigation of Complaints	38
9.10 Emergency Situations	38
9.11 Notices	38
9.12 Dispute Resolution	39
9.12.1 Alternative Dispute Resolution	39
9.12.2 Internal Dispute Resolution	39
9.13 Non-Waiver	39
9.14 Costs and Attorneys' Fees	39

## **ARTICLE 10**

<b>INSURANCE</b>	40
10.1 Insurance	40
10.1.1 General Provisions and Limitations	40
10.1.2 Types of Coverage	41
10.1.3 Deductible	41
10.1.4 Claims Submission	41
10.1.5 Notice of Damage to Lot	41
10.1.6 Annual Review	41
10.1.7 Annual Summary to Members	42
10.2 Insurance by Owner	42
10.3 Insurance by Tenant	42

## **ARTICLE 11**

<b>DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION</b>	42
---	----

11.1 Replacement or Repair of Association Property	42
11.2 Rebuilding or Repair of Improvements on Lots	43
11.3 Condemnation	43
11.4 Appraisals	43

## ARTICLE 12

### RIGHTS OF MORTGAGEES 44

12.1 Conflict	44
12.2 Liability for Unpaid Assessments	44
12.3 Reserve Fund	44
12.4 Contracts and Agreements	44
12.5 Notices to Eligible Holders	44
12.5.1 Loss	44
12.5.2 Delinquency	44
12.5.3 Insurance	44
12.5.4 Material Changes	44
12.5.5 Default	45
12.6 Inspection of Books and Records	45
12.7 Financial Statements	45
12.8 Voting Rights of Mortgagees	45
12.8.1 FHMLC	45
12.8.2 Termination of Development	45
12.9 Payment of Taxes and Insurance	46
12.10 Self-management	46
12.11 Mortgage Protection	46

## ARTICLE 13

### AMENDMENT 46

13.1 Member Approval Required	46
13.2 Restrictions on Certain Changes	46
13.2.1 Specific Subjects	46
13.3 <del>XXX</del>	48
13.4 Recordation	48

## ARTICLE 14

### GENERAL PROVISIONS 48

14.1 Headings	48
---------------	----



14.2 Severability	48
14.3 Liberal Construction	48
14.4 Conflict Between Governing Documents	48
14.5 Amendment to Referenced Statutes	48
14.6 Number; Gender	48
14.7 Easements Reserved and Granted	48
14.8 Power of Attorney	49
14.9 Term	49

DRAFT FOR MEMBER REVIEW

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
PORTOFINO OF VACAVILLE HOMEOWNERS ASSOCIATION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by Portofino of Vacaville Homeowners Association a California nonprofit mutual benefit corporation (hereinafter sometimes referred to as the "Association").

**RECITALS**

A. WHEREAS, the Association is the successor in interest to Standard Pacific Corp., a Delaware corporation, which, as Declarant, executed that certain Portofino Declaration of Restrictions (CC&Rs), recorded on April 6, 2006, as Document No. 200600043297 in the Official Records of the County of Solano, California (the "2006 Declaration").

B. WHEREAS, the 2006 Declaration and the subsequently recorded Declarations of Annexation established certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in those certain parcels of real property located in the County of Solano, State of California, more particularly described as follows:

All that real property shown as Lots 1 – 178 and Parcels A, B, C and E, more particularly described on the subdivision map entitled "Final Map of Portofino" filed in the records of Solano County, California, on May 24, 2005, in Book 81 of Maps at page 49.

C. WHEREAS, Members, constituting at least fifty one percent (51%) of the total voting power of the Association, desire to amend, modify, and otherwise change the 2006 Declaration, pursuant to Section 11.2 thereof.

D. NOW, THEREFORE, pursuant to Section 11.2 of the 2006 Declaration, Members, constituting at least fifty one percent (51%) of the total voting power of the Association, do hereby declare that the aforesaid 2006 Declaration be amended and restated in its entirety, as set forth within this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Portofino of Vacaville Homeowners Association.

E. IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Planned Development within the meaning of *Civil Code* section 4175;

F. IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof.

G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in *Civil Code* section 5975, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

1.1 Additional Charges. "Additional Charges" means all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 8.6.

1.3 Architectural Control Committee. "Architectural Control Committee" and "ACC" means the Architectural Control Committee, if any, created pursuant to Article 7 of this Declaration and Article 10 of the Bylaws.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of Portofino of Vacaville Homeowners Association, as they may be amended from time to time, as originally filed with the Office of the Secretary of State of California on March 6, 2006.

1.5 Assessments. "Assessments" means any or all of the following: Annual Assessments, Special Assessments, and Reimbursement Assessments.

1.6 Association. "Association" shall mean Portofino of Vacaville Homeowners Association, its successors and assigns.

1.7 Attached Residences. "Attached Residences" means the residences situated on or about the common boundary line with an adjoining Lot that share certain improvements as described in Section 6.3.

1.8 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.9 Bylaws. "Bylaws" shall mean the Amended and Restated Bylaws of Portofino of Vacaville Homeowners Association, and any duly adopted amendments thereto.

1.10 Capital Improvement. "Capital Improvement" shall mean the original construction of an improvement that did not previously exist, as distinguished from the repair, upgrade, or replacement of an existing improvement.

1.11 Civil Code. "*Civil Code*" shall mean the California Civil Code as amended from time to time.

1.12 Common Area. "Common Area" shall mean Parcels A, B, C and E as shown on the Map and any improvements thereon.

1.13 County. "County" shall mean the County of Solano.

1.14 Courtyards. "Courtyards" shall mean Barbera Court, Bianco Court, Bonarda Court, Carema Court, Dolcetto Court, Galatina Court, Gavi Court, Moscato Court, Primivito Court and Refosco Court, as shown on the Map.

1.15 Courtyard Lots. "Courtyard Lots" shall mean the Lots that use all or any portion of the Courtyards for ingress and egress to the residences and garages situated on the Lots.

1.16 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Portofino of Vacaville Homeowners Association, recorded in the Official Records of the County of Solano, California, and any amendments thereto.

1.17 Development. "Development" shall mean all of the real property described in this Declaration which comprises Portofino of Vacaville Homeowners Association planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.18 Eligible Holder. "Eligible Holder" means any Institutional Mortgagee who has delivered a written notice to the Association that contains its name, address, and the number or address of the Lot encumbered by the Mortgage and requests that the Association deliver written notice to it of any or all of the events specified in Section 11.5.

1.19 Governing Documents. "Governing Documents" means the Articles, Bylaws, Declaration, and any Rules and/or Policies adopted by the Board of Directors and distributed to the Members.

1.20 Improvements. "Improvements" means any fixtures affixed to any Lot or Common Area in the Development within the meaning of Civil Code section 660.

1.21 Institutional Mortgagee. "Institutional Mortgagee" means: i) a First Mortgagee that is the State of California, a bank, a savings and loan association, an insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law, or ii) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veteran's Administration.

1.22 Lot. "Lot" or "Residential Lot" shall mean Lots 1 - 178 as shown on the Map and all Improvements thereon. Lots include the Lots on which the Attached Residences are situated and the Courtyard Lots.

1.23 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) means the act of caring for property and keeping it in its existing state, including preserving it from failure or deterioration by painting, caulking, cleaning, and minor, non-structural upkeep.

1.24 Majority of a Quorum. "Majority of a Quorum" means a majority of the votes cast in any lawful vote or election by the Members in which the number of votes cast equals or exceeds the number required to establish a quorum.

1.25 Map. "Map" shall mean the subdivision map entitled "Final Map of Portofino" filed for record in Solano County, California, on May 25, 2005, in Book 81 of Maps at Page 49, including any subsequently recorded amended final maps, certificates of correction, lot line adjustments and/or records of survey.

1.26 Member. "Member" shall mean an Owner.

1.27 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, is otherwise free from sanctions imposed by the Association, and is in compliance with all provisions of the Governing Documents.

1.28 Mortgage. "Mortgage" means a deed of trust as well as a mortgage in the conventional sense.

1.29 Mortgagee. "Mortgagee" means a beneficiary under a deed of trust as well as under a Mortgage. A "First Mortgagee" shall mean a beneficiary under a deed of trust (or under a Mortgage) who is first in priority of liens over all other encumbrances.

1.30 Owner. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot that is a part of the Development.

1.31 Party Wall/Party Fence. "Party Wall/Party Fence" means each wall or fence built as part of the original construction of the Residences within the Development and placed on the boundary line between the Lots. A wall or fence between a Lot and Common Area shall not be considered a Party Wall or Party Fence.

1.32 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 8.9.

1.33 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

1.34 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe, such that it is no longer useable or serviceable in its current condition.

1.35 Residence "Residence" means a residential structure located upon a Lot that is designed for human residential use and occupancy. The term "Residence" shall include any garage, porch, stoop, deck, balcony, entry steps, patio, etc. located on the Lot and serving the Residence.

1.36 Resident "Resident" means any person who resides on a Lot within the Development, whether or not such person is an Owner as defined herein.

1.37 Rules. "Rules" means the rules, regulations and policies governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.38 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 8.7.

1.39 Total Voting Power. "Total Voting Power" means the total number of votes of all Members entitled to vote at a particular time. Votes are calculated on the basis of one vote for each Lot.

## **ARTICLE 2**

### **HOMEOWNERS ASSOCIATION**

2.1 Management and Operation. The Association shall manage and operate the Development in accordance with the Governing Documents and California law. The Association shall have all of the powers set forth in the Governing Documents together with the general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under California law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Membership in the Association shall include, and shall be limited to, all Owners of any Lot located within the Development. Membership shall be appurtenant to and may not be separated from ownership of a Lot, and shall not be transferred, encumbered, pledged, alienated, or hypothecated in any way, except upon the transfer or encumbrance of the Lot to which it is appurtenant. Any attempt to make a prohibited transfer is void. Upon any transfer of title to a Lot including a transfer upon the death of an Owner, membership in the Association shall pass automatically to the transferee.

2.3 Voting. Only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors, the members of which shall meet the qualifications set forth in the Bylaws. Directors shall be elected or appointed as provided in the Bylaws.

2.5 Association Rules. Subject to *Civil Code* sections 4340 et seq., the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association.

2.6 Assessments. The Association shall have the power and duty to levy and collect Assessments, as further described in Article 8 of this Declaration.

2.7 Acquisition of Property. The Board, acting on behalf of the Association, shall have the power to acquire (by gift, purchase, or otherwise), real or personal property in connection with the affairs of the Association; provided, however, that in any fiscal year, acquisitions by purchase for items not included in the reserve budget shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the approval of a majority of the Total Voting Power of the Association. The foregoing Member approval requirement shall not apply to the acquisition of a Lot by the Association via foreclosure.

2.8 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area, provided that in any fiscal year expenditures for Capital Improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the approval of a majority of the Total Voting Power of the Association.

2.9 Sale or Transfer of Association Property. Except as otherwise provided herein or by law, the Board of Directors shall not in any fiscal year sell, lease, or otherwise transfer property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the Total Voting Power of the Association; provided, however, that the foregoing approval requirements shall not apply to the sale or transfer of any Lot which is owned by the Association as a result of the Association having acquired such Lot via foreclosure.

2.10 Easements to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights of way in, over, or under the Common Area or any portion thereof to Lot Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association, subject to the limitations set forth in the Governing Documents. Unless an exception as set forth in *Civil Code* section 4600 applies, the approval of a Majority of a Quorum of the Members shall be required before the Board may grant exclusive use of any portion of the Common Area to any Lot Owner.

2.11 Safety and Security. Neither the Association nor the Board is responsible for ensuring the safety and security of the Association's Residents, guests or invitees. Neither the Association nor the Board has police powers.

### **ARTICLE 3**

#### **OWNERSHIP RIGHTS AND EASEMENTS**

3.1 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained and used to meet the common interests of the Members of the Association and their families, tenants, guests and invitees as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.

3.2 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Development for ingress, egress, and support over and through the Common Area; provided, however, such nonexclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Lots over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable Rules and regulations governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to suspend an Owner's rights and privileges as a Member, including voting rights and the right to use the recreational facilities, for any period during which any Assessment against such Owner's Lot remains unpaid and/or for any violation of the Governing Documents of the Association;
- (c) The right of the Board, as set forth in Section 3.12, to grant easements and rights of way in, on, over, or under the Common Area subject to the limitations set forth in Section 2.10 and *Civil Code* section 4600;
- (d) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association, subject to any Member approval requirements set forth in this Declaration or the Bylaws; and,
- (e) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

3.3 Acquisition of Ownership Interest. Any person who acquires title to a Lot or any ownership interest within the Development must notify the Association of his or her acquisition of an ownership interest. Notice must be provided in writing, to the Association's managing agent, within thirty (30) days of the person's acquisition of an ownership interest.

3.4 Delegation of Rights of Use and Enjoyment. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, guests and invitees, subject to the terms of the Governing Documents, including but not limited to the restrictions on renting or leasing Lots contained in Article 5 of this Declaration. Each Owner shall notify the Association's managing agent of the names of any tenants of such Owner's Lot. Each Owner shall also notify the Association's managing agent of the names of all members of his or her household to whom such Owner or tenant has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner or tenant. Any rights of enjoyment delegated pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as



provided in the Governing Documents. Notwithstanding the above, a leasing or renting Owner shall be deemed to have delegated to tenants all rights of use and enjoyment of Common Area facilities.

3.5 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be recorded against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise.

If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise.

The Board shall have the right to levy a Reimbursement Assessment against the subject Owner for all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses incurred in connection with discharging a lien, including reasonable attorneys' fees.

3.7 Easements on Map. The Common Area and Lots are subject to the easements, dedications and rights-of-way shown on the Maps identified in Section 1.23, above.

3.8 Church Easement Rights (Parcel E). Parcel E is a Common Area Lot situated between Lots 59 and 60. Parcel E will be owned and maintained by the Association. Parcel E is subject to a private access and utility easement appurtenant to the Full Gospel Vacaville Church that owns certain real property that abuts Parcel E along its southerly boundary. The Association is responsible for the maintenance and repair of the Improvements and landscaping situated within Parcel E.

3.9 Easements in General. In addition to all easements reserved and granted on the Maps, and the easements provided in Section 3.2, there are hereby specifically reserved and granted for the benefit of the Lot and Lot Owners in common and for each Lot and Lot Owner severally, and for

the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

3.10 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable, satellite or master television antenna lines, drainage facilities, walkways, and landscaping as may be hereafter required or needed to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the Development except those metered or charged separately to the Lots.

3.11 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments over adjoining Lots and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner are hereby declared to have an easement for roof overhangs, eaves, windows, porches, staircases or other structural improvements resulting from the original construction of the improvements, settlement or shifting of structures, any encroachment easements granted by the Board of Directors in accordance with Section 3.12, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from such gutters and all other encroachments over each such adjoining Lot and/or Common Area.

3.12 Easements Granted by the Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkler systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

3.13 Partition Prohibited. There shall be no judicial partition of the Development, or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot is owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

3.14 Drainage Easements. Each Lot and the Common Area as the servient tenement are subject to an easement in favor of each other Lot and the Common Area as the dominant tenement for the retention, maintenance, repair or replacement of any storm drainage system installed on the servient tenement as part of the original construction of the Development. Unless maintained by the Association, each Owner shall maintain and repair that portion of the drainage system located on the Owner's Lot. Each Owner at all times shall keep the drainage system and intake drains, catch basins or area basins free and clear of debris, and Owner shall take any action that would in any manner interfere with the operation of the system. No Owner shall alter the grading on any Residential Lot without obtaining the prior written consent of the Board of Directors.

3.15 Maintenance and Repair Easement. Each Lot as the servient tenement is subject to an easement in favor of each other Lot as the dominant tenement for purposes of providing the agents of the Association whatever access may be necessary to perform the Association's maintenance and repair duties, as described in this Declaration.

3.16 Authority Over Common Area. The Board shall have the power and right in the name of the Association and all of the Owners as their attorney-in-fact, to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easement or rights, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property interest, in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Lot expressly consents to such action and authorizes the Association as attorney-in-fact of such Owner to execute and deliver all documents and interest to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Lot without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the Total Voting Power of the Association.

3.17 Party Fences. The following provisions shall govern Party Fences (also referred to as Good Neighbor Fences herein and in the 2006 Declaration):

- (a) General Rules of Law to Apply. Each Party Fence that was built as a part of the original construction of the Residences within the Development and placed on the dividing line between the Lots shall constitute a Party Fence, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable maintenance, repair and/or replacement of a Party Fence shall be shared by the Owners who make use of the fence equally, as set out in more detail in Section 6.4.
- (c) Destruction by Fire or Other Casualty. If a Party Fence is destroyed or damaged by fire or other casualty, any Owner who has used the fence may restore it, and if the other Owners thereafter make use of the fence, they shall contribute equally to the cost of restoration, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his or her negligent or willful act causes a Party Fence to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- (f) Resolution of Disputes. If any dispute arises concerning a Party Fence, the Owners of the fence shall resolve the dispute amongst themselves in any manner permitted by law.
- (g) Modifications. No Owner shall alter the size, shape or configuration or use any materials different from those used in the initial construction of the Party Fence without obtaining the prior written consent of the Architectural Committee and/or Board of Directors, as required by Article 7 herein.

3.18. Notice of Airport in Vicinity. This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibrations or odors). Individual sensitivities to these annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

In addition, this Property is in the area subject to overflight by the aircraft using Travis Air Force Base and as a result, residents 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 the federal military airport should, therefore, be prepared to accept such inconvenience, annoyance, or discomfort from normal aircraft operations.

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

## **ARTICLE 4**

### **USE RESTRICTIONS**

4.1 Residential Use. Except to the extent permitted by Sections 4.3 and 4.4, below, Lots shall be occupied and used for residential purposes only. The number of Residents per Lot shall not exceed two (2) individuals per bedroom plus one, so long as said limitation is not in conflict with any governmental regulation or ordinance.

4.2 Rental of Lots. The rental or lease of any Lot within the Development shall be subject to the provisions of the Governing Documents and Article 5 of this Declaration.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except such care facilities and professional and administrative businesses as may be permitted by applicable statutes and governmental ordinances and provided that there shall be no external evidence thereof. Lots and Residences shall be used for residential purposes only and no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or Residents may use a room or rooms in a Residence as an office, provided that: the primary use of the Residence is a residence; no advertising or signage is used in any manner in connection with the office use; no customers, clients or patients enter the Residence on any regular basis; and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of home offices within the Development in order to maintain the residential characteristics of the Development. Copies of any licenses or permits issued or required for such businesses allowed by this Article must be provided to the Association at all times that such businesses are operated.

4.4 Child Care Facilities. Child care facilities may be maintained in any Lot within the Development so long as they comply with all statutory and governmental requirements. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under Health and Safety Code section 1597.531. This Section 4.4(a) is intended to be and shall be conclusively deemed to be the written request to the operator or owner from the Association as specified in Health and Safety Code section 1597.531;

(b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability, action or cause of action arising out of the existence and operation of the day care center;

(c) Abide by and comply with all of the Association's Governing Documents, including all Rules;

(d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and

(e) 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.

4.5 Offensive Conduct, Nuisances, Noise. No harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area or the use and enjoyment of their Lots. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

4.6 Use of the Common Area. All use of Common Area is subject to the Governing Documents and no modifications of any type shall be made to the Common Area without the express written permission of the Board. The Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area. No portion of the Common Area shall be monopolized by any Owner, group of Owners, or tenants without the prior written approval of the Board of Directors.

4.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot.

4.8 Requirement of Architectural Approval. As addressed in greater detail in Article 7, all construction, installation, modification, or alteration of buildings, common systems (including

plumbing and electrical systems), outdoor structures (including accessory dwelling units), landscaping, and outdoor lighting are subject to the prior written approval of the Architectural Committee and/or Board.

4.9 Solar Energy Systems. Solar energy systems as defined in *Civil Code* sections 801.5(a)(1) and (2) are subject to prior architectural approval pursuant to Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any solar energy system upon any portion of the Common Area. The Board may adopt Rules regarding the installation and maintenance of solar energy systems.

4.10 Sports Apparatus. No basketball standards (including portable basketball standards) or other sports apparatus (fixed or portable) shall be placed upon or attached to any portion of the Development without the written permission of the Board.

4.11 Mailboxes and Exterior Newspaper Tubes. Exterior mailboxes and exterior newspaper tubes shall be limited to the existing style of clustered mailboxes, subject to the terms of Section 6.5, herein.

4.12 Outside Drying and Laundering. Clothesline and drying racks as defined in *Civil Code* section 4750.10 are permitted as long as they comply with that section and the Association's Rules, and are installed in a backyard. Permanent structures designed to suspend a clothesline or serve as a drying rack are subject to prior architectural approval pursuant to Article 7. Nothing in this Declaration shall be deemed to authorize or permit any Owner to install any outside drying and laundering systems upon any portion of the Common Area. The Board may adopt Rules regarding the installation and maintenance of outside drying and laundering systems. No other outside clothes washing, drying, or airing facilities shall be maintained in the Development.

4.13 Satellite Dishes and Antennas. No outside radio, television or telecommunications dish, antenna, wire, or other receiving or transmitting device shall be erected, constructed, or maintained in the Development except: 1) those expressly approved by the Board, or (ii) those that, by law, cannot be prohibited. It is the intention of this Section 4.13 to restrict outside radio, television or telecommunications dishes, antennas, wire, and other receiving or transmitting devices in the Development to the fullest extent permitted by law. The Board may adopt Rules regarding the installation and maintenance of satellite dishes and antennas and related wiring for all telecommunications devices. Owners are strictly prohibited from installing dishes, antennas, and/or other telecommunications receiving or transmitting devices in the Common Area.

4.14 Animals and Pets.

4.14.1 Limitation on Animals and Pets. No animals shall be kept, bred, or maintained within the Development for commercial purposes. A maximum of four (4) common domestic household pets (i.e., dogs, cats and birds in cages) may be kept on each Lot. A reasonable number of fish or small caged animals may also be kept within a Residence, subject to any Rules adopted by the Board. No other animals or livestock may be kept, bred or raised on any Lot. The limitation on the number of pets within the Development

shall not apply to any pet living in the Development on the date this Declaration is recorded, but shall apply to any pet acquired after the date this Declaration is recorded.

4.14.2 Owner's Responsibility for Animals and Pets. While in Common Area and off the Owner's Lot, each dog must be restrained on a leash held by a responsible person capable of controlling it. No animal may be left, chained, or otherwise tethered in Common Area. The owner of each animal or pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such animal or pet. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal. The Owner shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, guests, tenants, or invitees.

4.14.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section.

4.14.4 Right to Prohibit. The Board shall have the right to prohibit the keeping of any animal that constitutes, in the sole and exclusive opinion of the Board, a nuisance or threat to persons, other animals, or property. Board action pursuant to this Section shall be effective only after a duly noticed hearing before the Board.

4.15 Subdivision or Merger of Lots. No Lot may be subdivided for any reason, nor may any two Lots be combined or merged without the prior written consent of the Association.

4.16 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container specifically designed for that purpose and provided by or on behalf of the Owner.

4.17 Machinery and Equipment; Vehicle Maintenance. Unless approved by the Board, no power equipment or machinery shall be permitted within the Development except as is customary and necessary in connection with approved construction and/or Residents' non-commercial use. 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, any other relevant factors. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any motorcycle or automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

4.18 Signs, Banners, Flags. No sign of any kind shall be displayed to the public view from any portion of the Development except:

(a) Signs required by legal proceedings;



- (b) Noncommercial signs or posters no larger than nine (9) square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed on or in an Owner's Lot, and limited to the fullest extent permitted by Civil Code section 4710;
- (c) A single sign of customary and reasonable dimension and design complying with the Association or Architectural Rules and reasonably located in the window of a Lot advertising a Lot for sale or rent;
- (d) Other signs which by law cannot be prohibited;
- (e) A flag of the United States subject to any city or county restrictions as to size and as to time, place, and manner of display;
- (f) A single identification sign which has been approved by the Board located outside of a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (g) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (h) Signs required for traffic control and regulation of streets or open areas within the Development; and
- (i) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.19 Courtyard Parking. No vehicles shall be parked on the Courtyards except within the designated parking spaces. The designated parking spaces within the Courtyard are reserved for use by the occupants of the Courtyard Lots that abut the Courtyard and their guests on a first come, first serve basis. Subject to the foregoing, the Board may adopt Rules regulating parking within the designated parking spaces, including rules that impose limitations on the time a vehicle may be parked in the parking space.

4.20 Prohibited Vehicles. No trailer, camper, mobile home, recreational vehicle, boat, golf cart or similar equipment or any commercial vehicle or truck other than a standard size pickup truck (i.e., one ton or less), shall be parked, kept, stored, or permitted to remain upon any area within the Development, other than wholly within a Lot's garage or temporarily in accordance with the Rules. All vehicles parked within the Development must have a current DMV registration and must display a current DMV registration sticker. The term "commercial vehicle" shall refer to any vehicle with a commercial registration issued by the DMV. Further, vehicles within the Development may not be dilapidated, inoperable or abandoned.

4.21 Parking Enforcement; Parking Rules. In addition to the provisions of Sections 4.19 and 4.20, above, the Board shall have the power and authority to adopt, promulgate, and enforce parking Rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall

include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles that are parked within the Development in violation of any of the provisions of the Governing Documents. The Rules adopted by the Board include, but are not limited to, limitations on the length of time that vehicles may be parked in Common Area spaces, the use of Common Area spaces by Residents and/or guests, and rules regarding parking permits or tags. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Lot Owner responsible or whose household members, tenants, or guests are responsible for the presence of such vehicle.

4.22 Garages. Each Owner and Resident shall keep the garage attached to his or her Lot in a sanitary and safe condition. Electric vehicle charging stations may only be installed with the prior written approval of the Board, subject to Article 7 herein. (No approval is necessary if the EV charging station is installed entirely within the garage, and is installed in compliance with the local building code.) The Board may adopt Rules regarding the installation and maintenance of electric vehicle charging stations.

4.23 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds.

4.24 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development without first obtaining approval from the Board of Directors; however, no temporary structure may be used as a permanent structure on any lot.

4.25 Mineral Exploration. No Lot shall be used to explore or remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

4.26 Drainage. There shall be no interference with the established drainage patterns or systems over or through any Lot within the Development so as to affect any other Lot or Common Area or any real property outside the Development unless adequate alternative provision is made for proper drainage and those provisions are approved pursuant to the provisions of Article 7. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets which exist at the time overall grading of the Development was completed by Declarant (or Declarant's successors or assigns) which existed on a Lot at the time the improvements constructed by Declarant (or Declarant's successors or assigns) on the Lot were completed. Each Owner shall maintain the established drainage system in the enclosed portions of his or her Lot so that it operates in the manner for which it was intended.

4.27 Driveways. All driveways shall be used solely for ingress and egress to and from garages and for parking (provided the driveway is large enough to accommodate a vehicle without the vehicle extending into the fire lane or sidewalk, and provided there are no Rules restricting parking in that area). No Owner shall use any driveway in a manner that interferes with the ability of any other Owner to use his or her garage.

4.28 Drilling. No drilling, mining or quarrying operation shall be conducted on any Lot or the Common Area at anytime.

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

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

## **ARTICLE 5**

### **RENTING OR LEASING**

5.1 Requirements for Renting. An Owner who wishes to rent his or her Lot shall complete a written application for permission to rent as described in Section 5.6, below. If the written application for permission to rent is granted, an Owner renting his or her Lot shall:

- (a) Do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least six (6) months and shall expressly provide that its terms are subject to all the provisions of the Governing Documents and that failure of the tenant, members of the tenant's household, invitees or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;
- (b) File a copy of the signed lease or rental agreement with the Board within five (5) days after the lease becomes effective. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy of the lease or agreement provided to the Board;
- (c) Comply with the insurance requirements set forth in Section 11.3 by requiring the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4 policy") and by providing to the Board a certificate from the tenant's insurer certifying that the insurance required herein has been procured and is in full force and effect;
- (d) Provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto; and
- (e) Notify the Board of the name of each tenant and of the members of the tenant's household, and register each of the tenants' vehicles with the Association.

5.2 Rental of Entire Lot. No Owner shall rent or lease less than their entire Lot and residence, except to the extent a Resident Owner rents to a roommate as permitted by Section 5.3. The

preceding sentence is intended to prohibit the operation of a rooming house or similar operation within the Development. No garage, accessory building, or other facility shall be rented, leased, or hired to anyone who does not have the right of possession of the entirety of the Lot. This Section is not intended to prohibit a resident Owner from sharing his or her Lot with a roommate or other person(s) with whom the Owner maintains a common household.

5.3 No Subletting or Short Term Rentals; Roommates. No portion of any Lot shall be sublet nor shall any Owner lease a Lot for transient or hotel purposes. Owners are prohibited from offering all or apart of any Lot for short-term rental (i.e., for a period of less than six (6) months, through Airbnb, VRBO or other similar websites or entities. No person who is not an Owner or Resident may occupy any portion of a Lot for any period of time whatsoever for any compensation or consideration whatsoever to the Owner or Resident, including without limitation, the payment of money and/or trade and/or barter of other goods, services, or property occupancy rights; any such person shall not constitute nor be deemed to be a guest, except that a resident Owner may share his or her Lot with a roommate or other persons with whom the Owner maintains a common household and such persons may pay rent to the resident Owner; any such rental shall be subject to the minimum lease terms set forth in this Article but shall not be considered a rental for the purposes of the restriction on the number of Lots leased or rented, as set forth below.

5.4 Restriction on Number of Lots Leased or Rented. Except as provided in Sections 5.4.1 and 5.4.2 below, not more than twenty-five percent (25%) (i.e., 44) of the Lots within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least 134 of the Lots in the Development are Owner-occupied. For purposes of this Article, the following individual shall be deemed Owner-occupants if the Lot is owned by an entity other than a natural person: (i) a Resident of a Lot who is a trustee or a beneficiary under a trust if legal title to the Lot is in the name of the trustee(s) of the trust; (ii) a Resident of a Lot who is a shareholder with a majority shareholder interest in the corporation that owns the Lot; and (iii) for any other legal entity, any Resident who is a majority owner of the entity.

5.4.1 Grandfathered Lots/Termination of Right to Rent. The limitation on the number of permitted rentals as set forth in Section 5.4 shall not apply to any Member who was already an Owner of a Lot on or before the date this Declaration is recorded, unless that Owner expressly consents to be subject to the limitation; however, the limitations set forth in Section 5.4 herein shall still apply to any such Lot or Lots upon transfer of title to such Lot (provided the exceptions set forth in Civil Code section 4740(c) do not apply), such that if the number of Lots then being leased or rented is more than the number permitted pursuant to Section 5.4, the Lot shall be sold to an Owner occupant and not for rental. For purposes of this Article 5, the right to rent a Lot shall not terminate for any of the reasons described in Civil Code section 4740(c), including but not limited to: transfers exempt for purposes of reassessment by the County tax assessor; probate transfers; and transfers exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement.

5.4.2 Hardship Waivers. Upon written request of an Owner, the Board shall have the right, but shall not be obligated to, waive the limitation on the number of permitted

rentals or the order of priority of requests to rent, described below, in cases of deserving and unusual hardship (for instance, a family illness requiring temporary relocation for treatment) provided:

- (i) Such waiver shall be for a limited term, not to exceed one (1) year;
- (ii) The Owner in question shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Lot as a Resident thereof upon the expiration of such limited term; and
- (iii) Such waiver shall be subject to other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.

5.5 List of Rented Lots. The Board shall maintain a list of all Owners currently leasing or renting a Lot, which list shall include: (i) the Owner's name and mailing address; (ii) the address of the rented Lot and the Owner's record date of ownership; and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

5.6 Written Application for Permission to Rent; Priority List. Any Owner desiring to lease or rent his or her Lot shall submit to the Board a written application for permission to rent on a form provided by the Board (the "Application"). The Application shall state: (i) the Owner's name, mailing address, and current telephone number(s); (ii) the Lot address and the Owner's record date of ownership; (iii) the proposed lease term; and (iv) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Lot. The Board shall establish and maintain a priority list of the Applications, organized in the order of date received by the Board.

5.6.1 Review of Application to Rent. Within thirty (30) days after receipt of the Application, the Board shall review and shall approve or deny the Application. Written notice of the Board's decision shall be transmitted to the requesting Owner and, if the request is denied, the notice shall specify the reason(s) for denial. If the Owner and his or her Lot are grandfathered pursuant to Section 5.4.1, the Board shall approve the Application subject to the other conditions of this Article. If the Owner and his or her Lot are not grandfathered, the Board shall approve the Application unless doing so will increase the number of Lots leased or rented within the Development to more than the number permitted under Section 5.4, or will otherwise result in the violation of any provision of this Article 5 or any other provision of the Declaration. When the number of Lots leased or rented in the Development is less than the number permitted under Section 5.4, the Board shall authorize the Owner who submitted the earliest received Application to rent his or her Lot. When the number of Lots leased or rented in the Development equals or exceeds the number permitted under Section 5.4, Owner Applications to rent shall be added to the priority list maintained pursuant hereto.

5.6.2 Reconsideration of Denied Application or Request for Hardship Waiver. If an Application or hardship waiver request is denied, the requesting Owner shall have a right, upon written request, to reconsideration by the Board. Within ten (10) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

5.6.3 Duration of Authorization to Rent; No Subletting. Subject to the provisions of this Article 5, once an Owner obtains permission to lease or rent a Lot, that Owner shall have the right to continue renting that Lot to consecutive lessees or renters for consecutive terms without having to submit or re-submit a request to rent; provided such lease or rental is otherwise in compliance with the provisions of this Article 5 and is without interruption of more than sixty (60) days or, in the case of approved remodeling of the Lot, ninety (90) days and provided, further, that during such interruption in rental the Owner shall not reoccupy the Lot for a period exceeding sixty (60) days. No subletting shall be permitted.

5.6.4 Decision of Board Conclusive. The decision of the Board of Directors in approving or denying an Application or hardship request shall be final and conclusive.

5.7 Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Lot shall provide such information as the Board may reasonably require to implement the provisions of this Article 5, including but not limited to the names of the tenants and the members of the tenant's household and the duration of the lease.

5.8 Association as Third Party Beneficiary. The Owner and the tenant(s) of any Lots subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant(s); that failure of the tenant, members of the tenant's household, or guests to comply with the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant(s); and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under the Declaration, including but not limited to the rights granted pursuant to Section 5.6 below, or under the law, including eviction, to the same extent as the Owner of the Lot. The Association's right to maintain an eviction action shall arise only in the event that:

- (i) The Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments against eviction by the Association; and,
- (ii) The Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

5.9 Assignment of Rents as Security for Payment of Liens. As security for the payment of all liens provided for under the Declaration, including those described in Section 8.2, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot,

reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in performance of any agreement thereunder including but not limited to those set forth in Section 8.2, to collect and retain such rents, issues, and profits as they may become due and payable. Upon any such default, the Association may at any time, upon ten (10) days written notice to such Owner, then (either in person, by agent, or by a receiver to be security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration, including but not limited to imposition of a Reimbursement Assessment and any Additional Charges. The assignment of rents and powers described herein shall not affect, but shall in all respects be subordinate to, the rights and power of the holder of any first Mortgage on any Lot, or any part thereof, to do the same or similar acts.

5.10 Owner Responsible for Tenant's Actions; Indemnification of Association. Each Owner leasing or renting a Lot shall be responsible and strictly liable to the Association for the action of such Owner's tenant(s) in or about all Lots and Common Area and for each tenant's compliance with the provisions of the Governing Documents. To the fullest extent permitted by law, every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its Directors and agents and shall hold them harmless from and against any cost, loss, claim or damages of any kind, arising out of the conduct or presence of the occupants of the Lot, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or non-enforcement by the Association of the Governing Document with respect to such occupants. Any amounts owed pursuant to this Section may be assessed as a Reimbursement Assessment.

5.11 Owner Prohibited From Using Common Facilities While Lot Rented. Any Owner who leases or rents his or her Lot and does not still reside in the Development shall not be entitled to use and enjoy any common facility during the period the Lot is occupied by a tenant or tenants.

5.12 Time-Share Arrangements Prohibited. No Lot or Lots shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "timesharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time. This Section shall not be construed to limit the personal use of any Lot in the Development by any Owner or his/her/its social or familial guests.

## ARTICLE 6

### MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

6.1 Owner's Maintenance Responsibilities. Each Owner shall maintain his or her Lot and all Improvements thereon in good condition and repair at all times. Shared Improvements shall be maintained as described in Sections 6.3, 6.4, and 6.5. Fences located on a common boundary between the Owner's Lot and the Common Area shall be maintained by the Association. Each Owner shall have the Improvements on the Owner's Lot periodically inspected for wood-destroying pests or organisms and, if necessary, immediately shall take appropriate corrective action therefor.

The Owner of a Courtyard Lot shall maintain and repair any utility lines situated within the Courtyard that exclusively serve the Owner's residence, including water, gas and electrical lines and sewer laterals, provided that no Owner may excavate or otherwise disturb any Courtyard Improvements or landscaping without the prior written consent of the Association. In granting consent, the Association may impose conditions to ensure that the work will be done in a proper manner, will be diligently pursued until completion and will not unreasonably interfere with the use of the Courtyard, and that all costs for labor and materials will be paid in a timely and proper manner.

If any Owner fails to maintain their Lot as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Lot and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Lot in the manner described in Section 8.9.

6.2 Owner's Landscaping Responsibilities. Each Owner shall maintain the landscaping and irrigation system within the fenced private yard on the Owner's Lot in a healthy and weed-free condition. The Owner immediately shall remove and replace any dying or dead vegetation on the Owner's Lot. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other customary prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. If the Owner fails to properly maintain the landscaping on the Owner's Lot, the Association may enter the Lot and perform the maintenance under the procedures described in Section 6.1 and shall have the same rights as described in Section 6.1.

All other landscaping on the Owner's Lot and the irrigation system serving the landscaping shall be maintained by the Association as described in Section 6.3.2.

6.3 Attached Residences Shared Maintenance Responsibilities. As part of the original construction of the Development, Declarant constructed roofs, siding and foundations on or about the common boundary line between the Attached Residences that are used by or are a part of the structural Improvements on the adjoining Lots, which Improvements are to be shared by the adjoining Lot Owners. The residences share a common foundation footing along the common boundary line. The roofs and siding are joined, and there may be no discernible demarcation between the roof and siding of one residence and the roof and siding on the adjoining residences.



The residences do not share a common wall; each residence has its own wall structure separated by an airspace from the abutting wall structure of the adjoining residences.

6.3.1 Definition of Shared Improvements. For purposes of this Section 6.3, the Shared Improvements for the Attached Residences consist of the following:

(a) the roofing and its components over the adjoining residences, including tiles, materials, and the waterproofing materials located between the exterior materials and the basic roof structure such as tar paper, membranes or weatherstripping. The basic roof structure (including the trusses and plywood and any chimneys) is not part of the Shared Improvement except any portion of the structure that crosses the common boundary line and serves as part of the basic roof structure for any two adjoining residences;

(b) any rain gutters and downspouts that drain water off the roofs of both adjoining residences (gutters and downspouts that serve only one residence are the responsibility of the Owner of that residence);

(c) the paint on the exterior surfaces of the adjoining residences, including the paint on the stucco, siding, trim, rain gutters and downspouts;

(d) any integral portion of any stucco or siding material that crosses the common boundary line and serves as siding material on the adjoining residences including rock, brick or other exterior treatment;

(e) the portion of the foundation that provides foundation support to two adjoining residential structures; and

(f) any other material located on or about the common boundary line that benefits the adjoining residences.

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

6.3.2 Shared Improvement Maintenance Responsibilities. The Shared Improvements shall be maintained in good condition and repair. In order to maintain uniform exterior appearances, the Owners are required to jointly: (a) repair and replace the roof and its components that are a part of the Shared Improvements (other than repair and replacement of individual tiles as described above); (b) repaint the exterior surface of the adjoining residences; and (c) cooperate in the maintenance and repair and replacement of the other Shared Improvements as necessary to maintain uniform exterior appearances and the useful life of the Shared Improvements.

The selection of materials used and paint colors shall be the same materials and paint used as a part of the original construction of the Attached Residences unless agreed otherwise by the Owners of the Attached Residences and approved by the Architectural Committee pursuant to the procedures described in Article 7.

Except as specifically provided in this Section 6.3.2, each Attached Residence Owner will be solely responsible for normal and customary routine maintenance and cleaning to these portions of the Shared Improvements that are located on such Owner's Lot. Each Owner, at that Owner's cost, shall undertake minor or cosmetic repairs to these Shared Improvements (e.g., replacement of individual roof tiles) located on the Owner's Attached Residence to the extent capable of being performed independently without affecting the integrity, useful life or appearance of the adjoining Shared Improvements, at such Owner's sole cost. The intent of this Section 6.3 is to minimize the shared maintenance and repair responsibilities so that each residence to the maximum extent is treated as a single-family detached residence.

**6.3.3 Notice and Cooperation.** If an Owner determines that maintenance, repairs or repainting are needed (the "proposed work"), the Owner shall notify the other Owner and the Owners shall meet within ten days of the request of any Owner to discuss in good faith the need for the proposed work, the party to perform the proposed work, the payment for the proposed work, and any related issues. If any Shared Improvement is damaged or destroyed and the loss is covered by insurance, the Owner immediately shall take the necessary steps to process the appropriate insurance claims. Any portion of any insurance proceeds received by the Owner attributed to any Shared Improvement shall be used only for the purpose of repairing or restoring the Shared Improvements except as may be otherwise required by the Owner's first Mortgagee or by the provisions of Article 11. If the loss is an uninsured loss, each Owner shall contribute his or her allocable share to repair or restore the Shared Improvement except as is otherwise authorized by Article 11.

**6.3.4 Allocation of Costs.** The cost of the maintenance and repair (including replacement of roofing materials or exterior repainting) of the Shared Improvements that are to be jointly maintained or repaired shall be allocated equally between the Lots unless the circumstances warrant a different allocation for a fair and equitable allocation of such costs. For example, if the need for maintenance or repair is caused by the willful or negligent act or omission of any Owner or occupant or their guests, agents or pets, the responsible Lot Owner shall pay the maintenance or repair costs. Declarant grants to the Owner of each Lot subject to this Section 6.3 as a dominant tenement an easement over the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the Shared Improvement as provided in this Section 6.3.

Each Attached Residence Owner shall comply with the property insurance requirements described in Article 10 and the repair or reconstruction requirements of Article 11.

Any disputes between Attached Residence Owners regarding the rights or duties under this Section 6.3 shall be resolved as described in Section 6.6.

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

the adjoining Lot as the servient tenement for access to that portion of the servient tenement as may be reasonably necessary to maintain, repair or replace the fence. Disputes shall be resolved as described in Section 6.6.

Fences on a common boundary line between a Lot and the Common Area shall be maintained by the Association. If the Association repairs any damage to the fence caused by any act or omission of the Owner or occupant or any family member, invitee or agent, the Owner shall reimburse the Association for its repair costs. If the Owner fails to do so, the Association may levy a reimbursement assessment against the Owner's Lot as described in Section 8.9.

6.5 Mailbox Maintenance. Clustered mailboxes are installed throughout the Development. The cluster mailboxes contain two or more mailboxes that serve two or more Lots. Each Owner whose Lot is served by the clustered mailbox, at that Owner's cost, shall be responsible for the maintenance, repair and replacement of the Owner's individual mailbox. The cost for the maintenance, repair and replacement of the base and post structure that supports the mailboxes shall be allocated equally among the Owners with mailboxes supported by the structure. If an Owner fails to pay the Owner's applicable share, any other Owner using that clustered mailbox may bring an action in any court of appropriate jurisdiction to recover the delinquent Owner's share, including costs and attorneys' fees. If any base, post or mailbox is replaced, it shall be replaced with the same type, size, color, design and materials as originally installed or as otherwise approved in writing by the Architectural Committee. Disputes shall be resolved as described in Section 6.6.

6.6 Dispute Resolution. If any dispute arises between or among the Owners regarding the Owner's shared maintenance rights and duties related to the Shared Improvements, Party Fences (a/k/a Good Neighbor Fences) or clustered mailboxes (i.e., Sections 6.3, 6.4 and 6.5 herein), the Owners shall resolve the dispute amongst themselves in any manner permitted by law.

6.7 Association's Maintenance Responsibilities. The Association shall maintain each of the following in good condition and repair at all times:

6.7.1 Common Area. The Common Area and all Improvements and landscaping thereon, including, but not limited to, natural preserve areas, park, roadway, irrigation systems, fences, benches, lighting fixtures and utilities serving the Common Area, storm drainage systems, and sanitary sewer systems not maintained by a government agency or public or private utility company. All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

6.7.2 Courtyards. The Improvements and any landscaping within the Courtyards, including the roadbed, subbase, pavement, curb, gutters, storm drainage system and sewer submain, but excluding any other utilities serving the residences, including water, gas, electricity and sewer lateral lines.

6.7.3 Landscaping. The landscaping within the unfenced portion of any front or side yard of each Lot and the irrigation system serving this landscaping.

6.8 Trash Removal. Each Lot Owner shall be responsible for the removal of all the trash and refuse from that Owner's Lot. Each Owner shall engage a trash removal service for the periodic removal from the Owner's Lot unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which containers shall be kept in the areas not visible from any adjoining Lot or public street except on trash collection day if curbside service is provided. Unless the Board adopts Rules to the contrary, trash containers may be placed at curbside no earlier than 6 p.m. on the day preceding the trash collection day and shall be retrieved no later than 9 p.m. of the trash collection day.

6.9 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in Section 6.3 above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

6.10 Reimbursement and Indemnification. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets, the Association shall charge the cost to the Owner of the Lot responsible for the costs and may levy a reimbursement assessment as described in Section 8.9. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in Section 9.5.2.

The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount shall be paid by the Owner.

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

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

7.1 Architectural Approval Required. The prior written approval of the Board is required for the following improvements and/or modifications.

7.1.1 Improvements. Except for improvements made or constructed by or on behalf of the Association, no building, fence, hedge, solar energy system, fence, wall, obstruction, screen, balcony, deck, patio, patio cover, tent, awning, outdoor lighting, improvement or other structure of any kind, and/or landscaping shall be commenced, erected, painted or installed within the Development, nor shall any exterior addition to or change or alteration thereto be made (including changes to windows, doors and/or skylights) until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same have been submitted to and approved in writing by the Board as provided in this Article 7.

7.1.2 Satellite Dishes and Antennas. No mast, pole, tower, antenna, receiver, transmitter or satellite dish, to the extent restricted by Section 4.11, may be commenced, erected or installed without the prior written approval by the Board as provided in this Article 7.

7.1.3 Equipment on Roof or Exterior Walls. Without limiting the generality of Section 7.1.1, above, mechanical equipment, such as air conditioners, shall not be placed on or attached to any roof, exterior wall, or Common Area without the prior written approval (including, without limitation, as to screening and installation) of the Board.

## 7.2 Establishment of Architectural Control Committee.

7.2.1 Members. The ACC, if one is appointed, shall be composed of three (3) Members in Good Standing appointed by the Board of Directors. If an ACC is appointed, the Board may also appoint one alternate member who may be designated by the ACC to act as a member of the ACC in the absence or incapacity of any ACC member. ACC members, if any, shall serve one-year terms subject to the Board's power to remove any ACC member and to appoint his or her successor. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

7.2.2 Board May Serve as ACC. If at any time there shall not be a duly-constituted Design and Architectural Control Committee, the Board shall exercise the functions of the ACC in accordance with the terms of this Article 7.

7.2.3 Vacancies. In the event of a vacancy on the ACC, if any, the Board shall have the full authority to appoint a new member.

7.2.4 Duties. It shall be the duty of the ACC, if any, to consider proposals or plans submitted to it pursuant to the terms of this Article 7 and make recommendations to the Board regarding approval or disapproval, to perform other duties delegated to it by the Board, to carry out all other duties imposed upon it by this Declaration and act in accordance with Civil Code section 4765. The Board has the authority to accept, modify or reject the ACC's recommendations and shall make the final decision on each request for approval.

7.2.5 Meetings, Minutes, Reimbursement. The ACC, if any, shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members of the ACC shall constitute an act by the ACC. The ACC, if any, shall keep and maintain a record of all

actions/recommendations taken by or made by it at such meetings or otherwise. The ACC and its members shall be entitled only to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any ACC function.

## 7.2 Establishment.

(a) The ACC, if any, shall be composed of three (3) Members appointed by the Board of Directors. The Board shall also appoint one alternate member who may be designated by the ACC to act as a member of the ACC in the absence or incapacity of any ACC member. ACC members shall serve two-year terms subject to the Board's power to remove any ACC member and to appoint his or her successor. Neither the members of the ACC nor its designated representatives shall be entitled to any compensation for service performed pursuant hereto.

(b) In the event of death or resignation of any member of the ACC, the Board shall have the full authority to designate a successor. If at any time there shall not be a duly constituted Architectural Control Committee, the Board shall exercise the functions of the ACC in accordance with the terms of this Article 7.

7.3 Architectural Rules. Subject to the requirements of Civil Code sections 4350 et seq., the ACC, if any, may propose, for adoption by the Board, Architectural Rules which may interpret and implement the provisions hereof by providing for any or all of the following:

- (a) The standards and procedures for ACC, if any, and Board review, including the required content of application and procedures for obtaining preliminary approval of plans;
- (b) Guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular improvement projects within the Development;
- (c) The criteria and procedures for requesting variances from any property use restrictions or minimum construction standards that would otherwise apply to the proposed improvement under the Governing Documents. All variances shall be reviewed on a case by case basis with no precedent being established if a variance is granted in a particular instance and must be approved by a majority of the affirmative votes of the Board;
- (d) Lists of repair projects and minor improvement projects that can receive final review and approval by the Design and Architectural Control Committee, if any, without approval by the Board, so long as the project is undertaken in accordance with plans and specifications that are consistent with the Architectural Rules or the project involves use of an identical color or external material to the existing color or material and the new materials/colors are submitted to and reviewed by the ACC, if any; and

(e) Notwithstanding the foregoing, no Architectural Rules shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

7.4 Application. Any Owner proposing to perform any work of any kind whatsoever, which requires prior approval pursuant to this Article 7, shall apply for approval by notifying the ACC, if any, and Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the ACC, if any, and Board may require.

7.5 Fees. The ACC, if any, and Board may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors.

7.6 Decisions on Architectural Applications. An Owner's request for approval shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons, may present information relevant to the requested approval. The Board's decisions shall be made in good faith and shall not be unreasonable, arbitrary or capricious. The Board may employ subjective criteria and judgments in its review of and determination regarding plans and proposals submitted to it. The Board's decisions shall be made from the perspective of the interest of the Development as a whole, including the coherence, value, attractiveness and aesthetic compatibility of all architectural designs and features in the Development, after consideration of all factors the Board determines to be relevant and after reasonable investigation consistent with the scope and circumstances of the proposal.

7.7 Grant of Approval. The ACC, if any, shall recommend approval by the Board and the Board shall grant the requested approval only if all the following conditions are met:

- (a) The Owner complied with the provisions of Section 7.4 above;
- (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the ACC, if any, and Board; and
- (c) The Board determines that the proposed improvements would be consistent with the standards and aesthetics of the Development and the purposes of this Declaration as to: quality of workmanship, design and materials; harmony of exterior design with the existing improvements; and location with respect to topography and finished grade elevations.

7.8 Timing and Form of Approval. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within sixty (60) days from the date of submission of a complete application to the ACC, if any, and Board. If the Board fails to act on a request for approval within sixty (60) days from the date of submission of a complete application, the Owner shall be entitled to request internal dispute resolution, as described in Section 9.12.2, below, and Civil Code sections 1363.810 [5900] et seq.; except that, in the case of an application for

installation or use of a solar energy system subject to Civil Code section 714, any application that is not denied by the Board within sixty days from receipt of a complete application shall be deemed approved. Owners are responsible for confirming receipt of an application by the Board. Verbal approvals will be of no force and effect. If an application is rejected, the decision shall include an explanation of the decision of the Board and a notice describing the Owner's right to request reconsideration by the Board, if any.

7.9 Appeals. The Rules shall contain procedures to process appeals pursuant to this Article; however, denial decisions rendered by the Board may not be appealed.

7.10 Commencement. Within ninety (90) days of receipt of approval pursuant to Sections 7.7 and 7.8 above, the Owner shall satisfy all conditions thereof and diligently proceed with the commencement and completion of all work pursuant to said approval. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.11 Completion. Unless shorter time is specified in the approval by the Association, the Owner shall complete the approved work within six (6) months after receipt of approval, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed in accordance with the provisions of Section 7.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.

7.12 Inspection of Completed Work; Non-Compliance. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article 7, the Owner shall give written notice thereof to the Board.

(b) Within sixty (60) days thereafter, the ACC, if any, and Board, or its duly authorized representative, may inspect such improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the ACC, if any, and Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

(c) If the Owner shall have failed to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification, the ACC, if any, or other duly



authorized representative of the Board shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the ACC, if any, or the Board's duly authorized representative. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the ACC, if any, and, in the discretion of the Board, to any other interested party;

(d) At the hearing, the Owner, the ACC, if any, and, in the Board's discretion, any other interested persons, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment; and

(e) If, for any reason, the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans.

7.13 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

7.14 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any Owner, or anyone deriving any interest in a Lot through him or her, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

7.15 Liability. Neither the ACC, if any, nor the Board (or any member thereof) shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within

the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.14, whether or not the facts therein are correct; provided, however, that the ACC, if any, and Board (or any member thereof) has acted in good faith on the basis of such information as may be possessed by it (or such ACC, if any, and Board member). Without in any way limiting the generality of the foregoing, the ACC, if any, and Board (or any member thereof) may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the ACC, if any, and Board. Every purchaser, by acquiring title to a Lot, agrees not to bring any action or suit against the ACC, if any, or Board (or any member thereof) seeking to recover any such damages.

7.16 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the ACC, if any, and Board (or any member thereof) as to the accuracy, efficacy, or sufficiency thereof. The obtaining of a permit or other approval of a government agency shall not be a substitute for nor constitute compliance with the requirements of this Article 7.

## **ARTICLE 8**

### **ASSESSMENTS AND LIENS**

8.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments; (ii) Special Assessments; and, (iii) Reimbursement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.

8.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.

8.1.2 Each Assessment Is a Separate Obligation. Each Assessment levied by the Association under this Article 8, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

8.1.3 Obligation Runs With the Land. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Lot within the Development shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Lot.

8.1.4 Owner's Liability After Transfer. After an Owner transfers fee title to any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Official Records of Solano County, California.

8.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration.

8.2.1 Continuing Lien. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law.

8.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, to conduct the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development.

8.4 Authority of the Board. The Board shall have the power and the duty to levy Annual, Special and Reimbursement Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

8.5 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two (2) separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated **PORTOFINO OF VACAVILLE HOMEOWNERS ASSOCIATION, OPERATING ACCOUNT** and **PORTOFINO OF VACAVILLE HOMEOWNERS ASSOCIATION, RESERVE ACCOUNT**. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 8.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Development, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

## 8.6 Annual Assessments.

8.6.1 Calculation of Estimated Requirement. Not later than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

8.6.2 Allocation of Annual Assessment. Allocation of Annual and Special Assessments. Annual and special assessments levied by the Board shall be levied on an annual basis (unless the Board designates otherwise) and shall be paid in twelve (12) equal monthly installments during the fiscal year, with each installment being due and payable on the first day of each month. Further, the Annual and Special Assessments shall be allocated among the Lots as described in this Section 8.6.2.

- (a) Courtyards Cost Center. All costs to inspect, maintain, repair and replace (including reserves) the Courtyard Improvements or landscaping, including the roadbed, subbase, pavement, curb, gutters and storm drainage system, and any administrative and management costs related thereto shall be allocated equally among all the Courtyard Lots. By way of example, costs to repair the Improvements within a specific Courtyard shall be allocated to all Courtyard Lots and not just the Courtyard Lots served by that Courtyard.
- (b) Remaining Costs. All remaining costs shall be allocated equally among all 178 Lots.

Cost center funds may be used only for the purposes they were intended for and not as general Association funds. The Board shall provide for a separate accounting of the cost center funds that are collected and expended on behalf of the cost center and for an annual review and disclosure of cost center reserves and reserve study. The Owners of Lots that are members of the cost center may establish an advisory committee to consult with the Board regarding the cost center, including issues regarding the level and quality of the maintenance. The final decision of any cost center issues shall rest with the Board.

Notwithstanding anything herein to the contrary in this Section 8.6.2, if the use of any Lot, the equipment or facilities maintained within any Lot or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Lot or Lots responsible for the increase.

8.6.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's maintenance and operating account, as reflected in the Association's

financial statement for such fiscal year, the Members shall vote to have the excess applied to the following year's assessments, as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by a vote of the Members.

8.6.4 Increases in Annual Assessment. Pursuant to Civil Code section 5605(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than twenty percent (20%) (or such other limitation on the increase as may be imposed by law), except upon the affirmative vote of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., Members representing at least 200 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

## 8.7 Special Assessments.

8.7.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

8.7.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments.

8.7.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in Civil Code section 5610, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association (i.e., Members representing at least 200 Lots), notwithstanding any lower quorum requirement set forth in the Bylaws.

8.8 Notice of Assessment Increases. Upon the imposition of a Special Assessment or an increase in the Annual Assessment, notice shall be provided as required by law to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Assessment.

8.9 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association, specifically including legal fees. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner

is obligated to pay to the Association. Imposition of a Reimbursement Assessment shall be effective only after a duly noticed hearing before the Board. A Reimbursement Assessment shall be due and payable to the Association when levied and subject to the same enforcement procedures as Annual and Special Assessments, including lien and foreclosure.

8.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

8.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

8.12 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner in accordance with *Civil Code* section 5660 or successor statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 8 except as in accordance with *Civil Code* sections 5705, 5710 and 5720. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges. Notwithstanding any other provision of this Declaration, the Association must comply with the requirements of the *Civil Code* when collecting delinquent Assessments.

8.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale as provided by law, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The decision to record a lien and initiate foreclosure may only be made by the Board and may not be delegated.

8.14 Remedies Cumulative. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive; that is, the Association may use one or more or all of the available remedies to collect delinquent Assessments.

8.15 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

8.16 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 8 shall have priority as of the date of recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage or first deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust, or pursuant to a power of sale contained in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

8.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 8, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 8. 8.18 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

- (a) All property dedicated to and accepted by Solano County or other local public authority and devoted to public use;
- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure, provided, however, that such exemption shall be applicable only during the period in which the Association is record Owner of such Lot; and
- (c) All Common Area.

## **ARTICLE 9**

### **ENFORCEMENT**

9.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that

acting to abate or enjoin such violation is not likely to foster or be in the best interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting its generality, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

9.2 Violation of Law is a Violation of Declaration. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

9.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

9.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

9.5 Rights and Remedies of the Association.

9.5.1 Rights and Remedies Are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

9.5.2 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 9.3 for such breach or infraction. A sanction may include but shall not be limited to a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after hearing duly-noticed hearing before the Board. Any monetary penalty imposed pursuant to this Section shall not exceed the amount for each violation, as set forth in the schedule of monetary penalties adopted pursuant to *Civil Code* section 5850(a). Each Owner shall be obligated to pay costs incurred by the Association relating to violation of any provisions of the Governing Documents by such members of Owner's household, tenants, guests, pets, or other invitees. Sanctions may be enforced by the Association in any manner permitted by law.



9.5.3 Continuing Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner, member of an Owner's household, or his or her tenants or guests fails to cease or remedy a violation after notice from the Board to do so, the Board may deem such a continuing violation and may impose separate and successive sanctions for each such violation without holding further hearings for each sanction.

9.6 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment, a remedy at law to recover damages for the breach or violation of the Governing Documents is inadequate and the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association or by any Owner, or by their respective successors in interest.

9.7 Limitation on Disciplinary Rights. The Association shall not have the power to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments. The provisions of this Section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

9.8 Disciplinary Rules. The Board may adopt Rules that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such Rules, when approved and adopted by the Board subject to Civil Code sections 4340 et seq., shall be deemed to be a part of the Association Rules provided for, in and constituting a part of the Governing Documents.

9.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter.

9.10 Emergency Situations. The following shall constitute emergency situations:

- (i) An immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development;
- (ii) A traffic or fire hazard;
- (iii) A threat of material damage to or destruction of the Development or any portion thereof; and
- (iv) A violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other

provision of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request for a hearing shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

9.11 Notices. Any notices required or given under this Article 9 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member, provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

#### 9.12 Dispute Resolution.

9.12.1 Alternative Dispute Resolution. Any dispute other than those listed in *Civil Code* section 5930(b) or those related to the power and duty of the Board of Directors to levy and collect Assessments through lien and foreclosure proceedings shall be submitted to alternative dispute resolution procedures ("ADR") as described in *Civil Code* sections 5925 et seq. In the case of any claim, dispute, or controversy which is not otherwise subject to *Civil Code* sections 5925 et seq., involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

9.12.2 Internal Dispute Resolution. In addition to the ADR provisions of *Civil Code* sections 5925 et seq., the Association shall provide for Internal Dispute Resolution in any dispute regarding the rights, duties or liabilities under *Civil Code* sections 4000 et seq., the *Nonprofit Mutual Benefit Corporation Law*, or the Governing Documents. The procedure may be invoked by any party pursuant to *Civil Code* sections 5900 et seq.

9.13 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

9.14 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Owner or Resident, member of his or her household, tenants, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorneys' fees and experts' fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. In the event of a court awarding attorneys' fees, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment, pursuant to the provisions contained in this Declaration.

## **ARTICLE 10**

### **INSURANCE**

10.1 Insurance. The Board shall obtain and maintain the insurance policies as provided below unless the Board determines that the cost is so unreasonable as to make maintenance of the insurance not in the best interest of the Association.

10.1.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(b) Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board.

(c) Subrogation. All policies shall include a waiver of subrogation by the insurer as to any claims against the Board, the manager, and/or the Owners.

(d) Primary Coverage. The policy or policies obtained by the Association will be primary to all other insurance.

(e) Cancellation/Modification. No policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association, except ten (10) days' notice shall be required for cancellation due to nonpayment of premium.

(f) Endorsements. All policies shall include: an agreed amount endorsement, if the policy contains a coinsurance clause; a replacement cost endorsement; and an inflation guard endorsement.

10.1.2 Types of Coverage. The following policies shall be obtained:

(a) Property Insurance. A policy of property insurance with the “causes of loss – special form” endorsement covering all insurable Common Area improvements and Association personal property against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of all insurable Common Area improvements.

(b) Liability Insurance. A commercial general liability policy with limits set by the Board but in no event less than those set forth in Civil Code Section 5805. The policy shall include the Association, Board and Owners as insureds. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Workers' Compensation. Workers' compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Development.

(d) Fidelity Bond. A fidelity bond or employee dishonesty policy naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount that shall be determined by the Board. This bond or policy shall extend coverage for acts of employees, agents, volunteers, the management company, and management company employees.

(e) Directors and Officers. A policy covering individual liability of Directors, officers and the Association for the negligent acts or omissions of the Directors and officers in an amount equal to at least the minimum amount specified in *Civil Code* section 5800. The policy shall include coverage for the acts of the agents of the Board and/or Association, including the management company and its employees and Association committee members and volunteers, if such coverage is available.

(f) Other Insurance. The Association may obtain other types of insurance as the Board determines to be necessary to protect the interests of the Owners.

10.1.3 Deductible. Owners shall be responsible to pay the deductible on any Association-maintained insurance applicable to a loss resulting from the conduct, omission or negligence of the Owner, Resident (including tenant), or his or her invitee or guest or from any loss which emanates from an Owner's Lot which damages Common Area, the

Owner's Lot, improvements and/or personal property, and/or the Lot, improvements and/or personal property of another Owner. The Association shall be responsible for payment of the deductible on Association-maintained insurance in all other instances.

10.1.4 Claims Submission. No Owner may make a claim to or put either the agent or any insurance company providing insurance to the Association on notice of any damages or claim relating to Association-maintained insurance. Claims may only be made by the Association.

10.1.5 Notice of Damage to Lot. Each Owner must notify the Association of any damage sustained to his or her Lot to which Association maintained insurance may apply within twenty-four (24) hours of the time when the Owner knew or should have known of the damage. Any reduction in insurance coverage available or premium increase resulting from the failure to provide notice of damage as required herein shall be the responsibility of the subject Owner and not the Association and may be subject to a Reimbursement Assessment.

10.1.6 Annual Review. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Common Area improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Development is situated.

10.1.7 Annual Summary to Members. The Association shall provide a summary of all existing Association policies of property, general liability, earthquake, flood and fidelity insurance, as required by *Civil Code* section 5300(b)(9).

10.2 Insurance by Owner. Each Owner, at that Owner's sole cost and expense, shall obtain and maintain a "special causes of loss" policy in an amount equal to or greater than the total replacement value of the insurable improvements on the Lot. The policy shall provide liability coverage in such amounts and for such acts or omissions as are normally and customarily included in homeowners property insurance coverage of the types required herein. Each Owner shall also consider maintaining a policy that includes the following coverage: dwelling, contents, loss assessment and loss of use. However, no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. The Board may require any Owner, and may periodically require all Owners, to provide a certificate from the Owner's insurer certifying that the required insurance under this Section has been procured and is in full force and effect; provided, however, that neither the Association nor the Board shall be responsible for procuring insurance on an Owner's behalf or verifying that Owners are maintaining the required insurance.

10.3 Insurance by Tenant. Each Owner who rents or leases out his or her Lot shall: (i) require the tenant to obtain and maintain a "renter's policy" (also known as an "HO-4" policy; and (ii)

provide to the Association a certificate from the tenant's insurer certifying that the required insurance under this Section has been procured and is in full force and effect; provided, however, that neither the Association nor the Board shall be responsible for procuring insurance on a tenant's behalf or verifying that tenants are maintaining the required insurance to cover such tenant's property and provide liability coverage.

## **ARTICLE 11**

### **DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION**

11.1 Replacement or Repair of Association Property. In the event of damage to or destruction of the Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. The Members may elect not to cause such replacement or repair by the vote or written consent of two-thirds of the Total Voting Power of the Association. If there is an election not to rebuild or repair, the applicable insurance proceeds shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

11.2 Rebuilding or Repair of Improvements on Lots. If any Lot and/or Residence is damaged or destroyed by fire or other casualty, the Owner(s) of any such Lot shall repair or rebuild the structures upon such Lot and restore such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Architectural Control Committee. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction. The Association shall make available to the owner(s) of the damaged Lot the proceeds from insurance applicable to the loss, if any. However, the amount of such proceeds shall not limit the obligation of the owner(s) to repair or replace the damage.

11.3 Condemnation.

(a) Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

(b) Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemner obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

11.4 Appraisals. Where the provisions of this Article 11 require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with an M.A.I. certificate or the equivalent, which appraiser shall be selected by the Board.

## **ARTICLE 12**

### **RIGHTS OF MORTGAGEES**

12.1 Conflict. Notwithstanding any contrary provisions contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

12.2 Liability for Unpaid Assessments. Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free and clear of any claims for unpaid Assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

12.3 Reserve Fund. The Association shall maintain as reserve funds a Reserve Account that shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area improvements that the Association is obligated to maintain. This reserve fund shall be funded by Annual Assessments that are payable in installments, as specified herein, rather than by Special Assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of Assessment or charge authorized by this Declaration or by law.

12.4 Contracts and Agreements. Any agreement for professional management of the Association shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of the Total Voting Power of the Association; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice.

12.5 Notices to Eligible Holders. The Association shall give timely written notice of each of the following events to each Eligible Holder.

12.5.1 Loss. Any condemnation loss or casualty loss that affects either a material portion of the Development or the Lot on which the Eligible Holder holds a First Mortgage;

12.5.2 Delinquency. Any delinquency in the payment of assessments or charges owed by the Owner of a Lot that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after it is due;

12.5.3 Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

12.5.4 Material Changes. Any proposal to take any action specified in this Article or in Section 13.2.1; or,

12.5.5 Default. Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the Bylaws that is not cured within sixty (60) days.

12.6 Inspection of Books and Records. Upon request, any Owner, First Mortgagee or Institutional Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

12.7 Financial Statements. The Association, at its own expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same with one hundred twenty (120) days after written request from any Institutional Mortgagee.

12.8 Voting Rights of Mortgagees. For purposes of this Section 12.8, a Mortgagee shall be entitled to one (1) vote for each Lot encumbered by a First Mortgage owned by that Mortgagee.

12.8.1 FHMLC. Unless sixty-seven percent (67%) of the Owners have given their prior written approval, the Association shall not be entitled to:

- a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the property by the Association and Owners shall not be deemed a "transfer" within the meaning of this provision.
- b) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or other improvements that serve more than one Lot, or the upkeep of lawns, plantings or other landscaping in the Development;



- c) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; or
- d) Use hazard insurance proceeds for losses to any property or improvements owned by the Association other than for the repair, replacement or reconstruction of the property and improvements.

12.8.2 Termination of Development. Any election to terminate the legal status of the Development as a “planned development” as defined by *Civil Code* section 4175 shall require:

- a) The approval of fifty-one percent (51%) of the Eligible Holders, if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Development; or,
- b) The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders.

12.9 Payment of Taxes and Insurance. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

12.10 Self-management. The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder shall be required to assume self-management of the Association, if professional management of the Association has been previously required by the Governing Documents or by an Eligible Holder.

12.11 Mortgage Protection. A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Development, but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if it is acquired by foreclosure, trustee’s sale or otherwise.

## ARTICLE 13

### AMENDMENT

13.1 Member Approval Required. This Declaration may be amended by the affirmative vote of Members representing not less than fifty-one percent (51%) of the Total Voting Power of the Association.

13.2 Restrictions on Certain Changes. With respect to any action to be taken under this Section which is also governed by provisions of Article 12 that expressly require the approval of the Members and/or Mortgagees, the requirements of Article 12 must be satisfied in addition to the requirement of this section 13.2.

13.2.1 Specific Subjects. The approval of sixty-seven percent (67%) of the Total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each Lot encumbered by a First Mortgage owned by the Eligible Holder, shall be required to amend any provisions of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- a) Voting rights;
- b) Assessments, Assessment liens or priority of Assessments;
- c) Reserves for maintenance, repair and replacement of Common Area;
- d) Insurance policies or fidelity bonds;
- e) Rights to use the Common Area;
- f) Responsibilities for maintenance and repair of any portion of the Development;
- g) The boundaries of a Lot;
- h) The interest of an Owner in Common Area;
- i) Convertibility of Lots into Common Area or of Common Area into Lots;
- j) Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his Lot;
- k) Any change in the primary purposes to which any Lot or the Common Area is restricted;
- l) Restoration or repair of the Development (after hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;  
or,
- m) The provisions of Section 8.16 (Priority), Article 12 (Rights of Mortgagees) and this Section 13.2.1.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

13.4 Recordation. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Official Records of the County of Solano.

## **ARTICLE 14**

### **GENERAL PROVISIONS**

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

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

14.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

14.4 Conflict Between Governing Documents. In the case of any conflict between the Articles of Incorporation, Bylaws and/or Rules and this Declaration, this Declaration shall control.

14.5 Amendment to Referenced Statutes. References in this Declaration to particular statutes, including sections of the *Civil Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes.

14.6 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

14.7 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

14.8 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

14.9 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period, a written instrument approved by Owners entitled to vote and holding at least fifty-one percent (51%) of the Total Voting Power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Official Records of Solano County, California.

IN WITNESS WHEREOF, we, the Members of Portofino of Vacaville Homeowners Association, constituting at least fifty-one percent (51%) of the Total Voting Power of said Association, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Portofino of Vacaville Homeowners Association, in accordance with Article 11, Section 11.2 of the 2006 Declaration, by means of the signatures of the President and Secretary of the Association, duly authorized by the affirmative vote of at least fifty-one percent (51%) of the Total Voting Power of the Association, which Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be recorded in the Official Records of Solano County, California.

DATED: \_\_\_\_\_

PORTOFINO OF VACAVILLE  
HOMEOWNERS ASSOCIATION

\_\_\_\_\_  
(INSERT NAME), President

\_\_\_\_\_  
(INSERT NAME), Secretary

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF SOLANO

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and 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.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (SEAL)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF SOLANO

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and 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.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (SEAL)