

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
REGARDING A PLAN OF OWNERSHIP**

**HILLER HIGHLANDS FOUR ASSOCIATION, INC.**

**AMENDING THE  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
RECORDED ON MAY 6, 1988 AS  
INSTRUMENT NUMBER 88-108588,  
OFFICIAL RECORDS OF ALAMEDA COUNTY, CALIFORNIA**

# HILLER HIGHLANDS FOUR ASSOCIATION

## SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

### ARTICLE 1. PREAMBLE

Hiller Highlands Four Association, a California Non-Profit Mutual Benefit Corporation (hereinafter referred to as "Association"), hereby adopts, pursuant to Section 1355 of the Civil Code, the following Second Amended and Restated Covenants, Conditions and Restrictions relating to the Development known as Hiller Highlands Phase Four.

### WITNESSETH:

WHEREAS, Hiller Highlands Four Association is a membership organization comprised of all the Owners of the Lots located in the City of Oakland, County of Alameda, California, described as Tract 3358, Oakland, Alameda County, California, as shown on the subdivision map so named, recorded May 3, 1972, in map book 74, pages 81-84, Alameda County Records which property is a Development within the meaning of California Civil Code Section 1351 and is subject to the provisions of the Davis-Stirling Common Interest Development Act; and

WHEREAS, Members of the Association desire to amend and restate the restrictions heretofore adopted under a general plan of improvement for the benefit of all of said Lots and Improvements and the Owners thereof;

NOW, THEREFORE, Association hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of providing a means of managing the Development and of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof:

### ARTICLE 2. DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article 2 shall, for all purposes of this Declaration, have the meanings herein specified.

**Architectural Control Committee** shall mean the committee which shall be created by the Board of Directors of the Association pursuant to Article 7 and Section 5.6.11.

**Architectural Rules** shall mean rules adopted by the Board of Directors, with the advice of the Architectural Control Committee and pursuant to Article 7.

**Articles** shall mean the Amended Articles of Incorporation of Hiller Highlands Four Association which are filed in the Office of the Secretary of State of the State of California.

**Association** shall mean Hiller Highlands Four Association, the California Non-profit Mutual Benefit Corporation described in Article 5, including its successors and assigns. The Governing Board of the Association shall be a Board of Directors (the "Board"). The Association shall be governed by these Covenants, Conditions and Restrictions (the "Declaration") and by the Association's Bylaws (the "Bylaws").

**Association Assets** shall mean all property and assets owned by the Association or the Owners as tenants in common.

**Beneficiary** shall mean a mortgagee under a mortgage as well as a beneficiary under a deed of trust.

**Board** shall mean the Board of Directors of the Association.

**Bylaws** shall mean the Bylaws of the Association, which are or shall be adopted by the Association.

**Common Area** shall mean the Common Area Lots which are owned equally by the Owners of Residence Lots 1 through 80, each Owner having 1/80th undivided interest in said Common Area Lots. The Common

Area consists of Lots 81, 82, 83, 84, 85, 86, 87 and 88, as shown on the map described above.

**Common Area Personal Property** shall mean all personal property and equipment purchased by the Association with respect to the operation and maintenance of Common Areas.

**Declaration** shall mean the within Declaration of Covenants, Conditions, and Restrictions of Hiller Highlands Four Association, and as said Declaration may from time to time be amended.

**Declarant** shall mean Hiller Highlands Four Association, and its successors and assigns.

**Exclusive Use Common Area** shall mean a portion of the Common Area designated by the Declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is appurtenant to the separate interest or interests.

**Governing Documents** shall mean collectively this Declaration, the Articles of Incorporation, the Bylaws, and the Association Rules and Regulations.

**Guest** shall mean a person who has possession of the separate interest for a term of one month or less. A guest who remains in possession of the separate interest more than one month shall be deemed a Resident.

**Insurance Committee** shall mean the committee which shall be created by the Board pursuant to Section 5.6.9.7.

**Landscape Committee** shall mean the committee which shall be created by the Board pursuant to Section 5.6.11.

**Landscape Rules** shall mean rules adopted by the Board, with the advice of the Landscape Committee.

**Lot** shall mean and refer to any single plot of land shown upon any recorded subdivision map of the property described in Exhibit A hereto, with the exception of the Common Area and the Exclusive Use Common Area within the Lot. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed on a Lot.

**Manager** shall mean the person or corporation who may be appointed as such pursuant to Section 5.7.4.

**Member** shall mean every person or entity who holds a membership in the Association, pursuant to Section 5.2, and whose rights as a Member are not suspended pursuant to Article 5 below.

**Nuisance** shall mean anything which is injurious to health, including but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any public street.

**Occupant** shall mean an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of the separate interest.

**Owner** shall mean the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated in the Project, and any related interest in the Common Area, excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Vendee of a Lot under a contract of sale (Real Property Sales Contract).

**Parking Area** shall mean any portion of the Common Area which has been established and designated for the uses as set forth in Section 4.2.1.2.

**Parking Rules** shall mean rules adopted by the Board, with the advice of the Streets, Parking and Lighting Committee, pursuant to Section 3.1.16.

**Party Wall** shall mean any wall of a Residence, located on a property line dividing any Residence, which wall is commonly used by any such Residence.

**Patio Gardens** shall mean those areas of the Common Area Lots which were established by the original Developer of the Project as patio rear yard areas for the particular use of an individual residential Lot by the construction of enclosures adjacent to said residential Lots.

**Project** shall mean all of the real property described in the Subdivision Map, together with all improvements made thereon.

**Quorum** shall mean one third (1/3) of the voting power of the Association unless otherwise provided in the Articles of Incorporation, this Declaration or the Bylaws.

**Residence** shall mean a building or buildings on a Lot used for residential purposes.

**Resident** shall mean any person residing in a residence Lot, whether he be an Owner, long-term guest, tenant, live-in domestic employee or residing family member of any of the above.

**Rules** shall mean the rules adopted by the Board, as they may from time to time be in effect pursuant to the provisions of Section 5.9.

**Streets, Parking and Lighting Committee** shall mean the committee which shall be created by the Board pursuant to Section 3.1.17.

**Subdivision Map** shall mean that certain Subdivision map entitled Tract 3358, Oakland, recorded in the Office of the County Recorder of Alameda County, California, on the 3rd day of May, 1972, in Book 74 of

Maps at Pages 81-84, et seq.

**Subject Property** shall include all of the real property referred to on the Subdivision Map.

### **ARTICLE 3. RIGHTS, EASEMENTS AND RESTRICTIONS: RESIDENTIAL AREA**

#### **3.1 Residential Area: Permitted Uses And Limitations**

Lots within the Residential Area shall be for the exclusive use and benefit of the Owners thereof, subject, however, to all of the following limitations and restrictions.

**3.1.1 Residential Use.** Each residence Lot shall be used as a residence for a single family and for no other purpose. No commercial activity or business shall be operated or maintained in the project, except for "home offices" that do not generate traffic, clients or noise in excess of that generated by reasonable domestic use.

**3.1.2 Rental of Residence.** An Owner shall be entitled to rent the Residence situated on his Lot subject to the restrictions contained in Section 3.1.1, above, provided, however, that the term of said rental shall not be for a term less than sixty (60) days. Any rental or lease of a Residence shall be subject to the Governing Documents, including the Rules. The Owner shall provide each tenant or lessee with a copy of this Declaration and a copy of the Articles of Incorporation, Bylaws and all pertinent Association Rules and Regulations. The Owner shall at all times be responsible for his tenant's or lessee's compliance with all of the provisions of this Declaration, the Bylaws, and the Rules with respect to the use and occupancy of the Residence and the use of the Common Area.

**3.1.3 Non-Resident Owners.** Non-resident owners shall at all times provide to the Association's Board of Directors their current mailing address and phone number.

**3.1.4 Animals.** No animals of any kind shall be maintained, bred or kept on any Lot or in the Common Area except that dogs, cats or other customary household pets in a reasonable number and size may be kept, provided, however, that they are not kept, bred, or maintained for any commercial purposes, and provided further that the Rules may limit or restrict the keeping of such pets. All dogs belonging to Residents or their guests must be attended, leashed, and controlled when having access to the Common Areas or contiguous unenclosed areas of individual Lots. Owners are responsible for clean up and removal of animal waste products deposited by animals under their control or the control of their guests.

**3.1.5 Structures for Animals.** No structure for the care, housing or confinement of any house or yard pet shall be maintained so as to be visible from neighboring property.

**3.1.6 Antennas Installed in Exclusive Use Common Areas.** Installation of a radio, video, or television antenna, including a satellite dish, designed to receive television signals that is or will be located on property within the exclusive use or control of the antenna user, and that is not otherwise prohibited by law, must be within applicable requirements of the California Civil Code Section 1376 and the Code of Federal Regulations, 47 CFR Section 1.4000, or comparable superceding statute. As allowed by applicable law, the Board may request notification prior to installation of such radio, video, or television antenna, including a satellite dish. The Board may disallow installation of antennas or satellite dishes with a diameter or diagonal measurement exceeding one meter, or with a height more than 12 feet above the roof line and/or require that installation be to a height that the antenna, if it topples, will be wholly contained within the owner's property. As allowed by applicable law, the Board may prohibit installations of individual antennas or satellite dishes when the Association has installed a central system. As allowed by applicable law, the Board may disallow installation of antennas or other devices that are not designed to receive television signals. As allowed by applicable law, the Board may enforce reasonable painting or other camouflage requirements provided such requirements do not impair reception. As allowed by applicable law, the Board may establish and enforce collection powers that allow the Association to recover for any resulting Association property damage and other costs arising from harm caused by an Owner's installation of such installed antennas or satellite dishes. Such powers of the Board to levy a Reimbursement Assessment are pursuant to Section 6.4 below. As allowed by applicable law, the Board may establish and impose penalties on Owners who violate this Section and applicable Rules. The Board has the authority to require that any contractor installing any antenna or satellite dish provide appropriate proof of liability and workers' compensation insurance prior to commencing work, and requiring that such contractor agree in writing to indemnify and defend the Association from any claims arising out of or in connection with his work.

**3.1.7 Utility Service.** No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved structures.

**3.1.8 Prohibitions Regarding Certain Conveyances and Structures.** No boat, van, mobile home, recreational motor home, trailer of any kind, truck, camper larger than a half (1/2) ton pick-up truck, dilapidated motor vehicle or permanent tent, shed or similar structure shall be parked, kept, placed, maintained, constructed, reconstructed or repaired upon any Lot, private street or elsewhere on the Common Area within the Project in such a manner as will be visible from neighboring property or adjacent streets; provided, however, that the provision of this Section 3.1.8 shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with the construction or any work of improvement approved by the Board. No commercial vehicles of any nature shall be parked or stored on the exterior of any Lot or on the private streets of the Project, except for commercial vehicles providing services to the Owners of Lots or the Association, and in that event only for the duration necessary to provide such services.

**3.1.9 Nuisances.** No rubbish, debris or pet droppings of any kind shall be placed or permitted to accumulate on a Lot or on the Common Area, and no odors shall be permitted to arise there from, so as to render any Lot or the Common Area unsanitary, unsightly, harmful or detrimental to any of the property in the vicinity thereof or to the occupants thereof. No nuisance shall be permitted to exist or operate upon any Lot so as to be harmful or detrimental to any property in the vicinity thereof or to its occupants. No noxious or offensive activities shall be carried on in any Lot or in the Common Area, including the Association's streets, nor shall anything be done therein which may be or become an annoyance or nuisance to the other residents. Each Owner shall comply with all requirements of the local or state health authorities and with all other applicable governmental ordinances regarding occupancy and use of Residences. Each Owner is accountable to the Association and other Owners for the conduct and behavior of persons residing in or visiting his Lot. Any damage to the Common Area caused by such persons shall be repaired at the sole expense of the Owner of the Lot where such persons are residing or visiting; the Board may levy a Reimbursement Assessment, pursuant to Section 6.4 below, to recover expenses incurred for such repairs. The Board is entitled to determine if any noise, odor or activity constitutes a nuisance.

**3.1.10 Noise.** Residents are entitled to the quiet enjoyment of their homes, and excessive noise shall be prohibited at all times. No Owner shall engage in or permit any occupant or guest to engage in noise, including, but not limited to the unreasonable noise of pets or playing of musical instruments or playing of sound reproduction equipment, including but not limited to stereo speakers or other loud speakers, which would unreasonably disturb another resident's quiet enjoyment of his or her Lot or of the Common Area. Other sources of noise or vibration, such as from treadmills and hot tub motors, are likewise subject to the preceding restrictions. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot.

**3.1.11 Trash Containers and Collection.** All garbage and trash, other than recycled materials, shall be placed and kept in covered containers, with covers securely closed. Recycled materials may be placed in uncovered recycling collection containers; however such materials must be secured so as to avoid spillage from these containers. All types of trash containers shall be placed on level locations, to avoid toppling. In no event shall such containers be maintained so as to be visible from neighboring property except on regularly scheduled scavenger pick-up days.

**3.1.12 Clothes Drying Facilities.** No outside clotheslines or other outside clothes drying or airing facilities shall be maintained on any Lot unless the Architectural Control Committee finds such facilities to be adequately concealed so as not to be seen from any adjacent property.

**3.1.13 Fences and Walls.** All fences and concrete or masonry walls in the Project, with the exception of the fences described in Section 4.5, shall be erected, repaired or maintained by the Association or, if by Lot Owners, only upon prior written approval of the Board. The fences described in Section 4.5 shall be repaired, maintained and painted in accordance with standards established by the Board, but with the cost to be borne by the Lot Owner or Owners having exclusive license to the area enclosed. However, when segments of the fences described in Section 4.5 separate two Patio Gardens, the cost of structural repairs for such segments shall be borne jointly by the Owners of the two Lots entitled to use the adjacent Patio Gardens or singly by the responsible Owner of one of the two adjacent Lots, in accordance with the procedures and the principles of accountability which would apply to party fences, as set forth in Section 3.3. The cost of routine repainting and maintenance of one side or the other of such segments of fences separating Patio Gardens shall be borne by the Lot Owner on whose side a segment of such fence is to be repainted or routinely maintained.

**3.1.14 Fires and Smoking.** There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed for such purpose. When used outdoors, all smoking products, such as cigarettes, cigars, etc., and their ashes shall be completely extinguished and discarded in secure containers.

**3.1.15 Garages.** Each Owner shall be responsible for the maintenance and repair of the interior of the Garage included within his Lot. Garages shall be used only for the parking of motor vehicles, storage and workshop pursuant to such Rules as the Association may from time to time adopt. Notwithstanding other permissible uses of space in Garages, Lot Residents owning one or two motor vehicles shall leave such garage space or spaces available as shall be required for the regular parking of said vehicle or vehicles.

**3.1.16 Parking.** The Board shall have the power and duty to establish reasonable Parking Rules for the regulation of parking in the Project, including but not limited to the power to prohibit parking by Residents along private streets, except for specified brief periods, and the power to prohibit parking by Residents in the Parking Areas, which are reserved for guests and others, as set forth in Section 4.2.1.2. However, the City of Oakland shall be, and is hereby granted an easement for access over, through and across all streets within the Project for purposes of enforcement of all municipal parking codes. Said streets may be so posted by the Association, subject to the City of Oakland's approval of all such posting.

**3.1.17 Streets, Parking and Lighting Committee.** The Board shall appoint a Streets, Parking and Lighting Committee to assist the Board in supervising the maintenance, repair and restoration of the private streets and walks, the Parking Areas, and the Association lighting installations throughout the Project; and to assist the Board in its duty to enforce the Parking Rules.

**3.1.18 Machinery and Equipment.** No commercial machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot within the Residential Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Residence or appurtenant structures in the Project.

**3.1.19 Dry Rot, Structural Pests, Insects and Rodents.** No Lot Owner shall permit any thing or condition to exist upon his Lot which shall induce dry rot or excessive moisture on his or adjacent Lots; attract or give access to termites or other structural pests; or breed, harbor or attract infectious plant diseases, noxious insects or rodents.

**3.1.20 Responsibility for Repairs, Replacement, or Maintenance re Damage by Wood-Destroying Pests or Organisms.** The Association shall be responsible for the repair of all damages to the Common Areas caused by wood-destroying pests or organisms, and shall be entitled to recover the costs thereof as a Special Assessment if necessary. The individual Owners shall be responsible for the repair of all damages to the Exclusive Use Common Areas and to the Residences occasioned by wood-destroying pests or organisms. In the event that an Owner fails or refuses to take reasonable steps to eradicate wood-destroying pests in the Exclusive Use Common Area appurtenant to his interest, or in the Residence, the Association may eradicate the pests and may impose a Reimbursement Assessment on the Owner, following notice and an opportunity for a hearing. The Association shall be responsible for arranging for extermination and abatement of wood-destroying pests or organisms in the Common Area. The Owners shall be financially responsible for extermination costs for extermination of wood-destroying pests in Exclusive Use Common Areas and in the Residences. The Association may cause the temporary, summary, removal of any occupant of a Residence for such periods and at such times as may be necessary for prompt and effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance of areas damaged by wood-destroying pests or organisms, and the cost of repairing damage to other owners' Residences occasioned by an Owner's failure or refusal to timely exterminate such pests in his own property shall be borne by the Owner(s) of the Lot(s) affected. The Association shall give notice of the need to temporarily vacate, pursuant to such treatment, repair, or maintenance, in accordance with applicable law.

**3.1.21 Restrictions on Further Subdivision.** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof. No easement or other interest in a Lot shall be given without the prior written approval of the Board of Directors.

**3.1.22 Signs.** No signs whatsoever (including, but without limitation, commercial and similar signs) which are visible from neighboring property shall be erected or maintained on any lot except: such signs as may be required by legal proceedings; residential identification signs, subject to the approval of the Board of Directors as to suitability; and not more than one "for sale" or "for rent" sign per Lot having maximum face area of two square feet, pursuant to the Rules of the Association, or as otherwise permitted by California Civil Code Section 713.

## **3.2 Construction and Alteration of Improvements**

No construction or alteration of the exterior of improvements on a residence Lot shall be undertaken without prior written approval of the Board pursuant to Article 7 of this Declaration. No construction or alteration of the interior of a Residence shall be undertaken where such construction or alteration would compromise the

structural integrity of the unit or the adjacent unit or units or would impair the effectiveness of sound control between residence Lots. The construction or alteration of fences and walls, whether located entirely on residence Lots or extending from the Common Area into residence Lots, shall only be undertaken in such manner as to be in compliance with Section 3.1.13 and Section 4.5. No Resident or his agent shall remove or alter landscaping in those areas of an individual residence Lot where, pursuant to Section 5.6.7, the Association has jurisdiction over landscaping.

### **3.3 Party Walls, Fences and Roofs**

**3.3.1 General Rules of Law to Apply.** Each wall which is built as part of the original construction of the Residences in the Project and placed on the dividing line between the Lots, or any fence constructed on the dividing line between any Lots, shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Owner of a Lot upon which a party wall or fence exists shall own to the center of such wall or fence. Where adjoining Residences as part of the original construction have a contiguous roof, which roof intersects or crosses a Lot line which divided these Lots, such roof shall constitute a party roof, and the provisions thereof shall apply to such party roofs.

**3.3.2 Sharing of Repair and Maintenance.** The Owners of each Lot upon which a party wall, fence or roof is located shall have a reciprocal non-exclusive easement to each contiguous Lot for the purpose of maintaining the party wall, fence or roof. The cost of reasonable repair and maintenance of a party wall, fence or roof shall be shared by the Owners who make use of the wall, fence or roof in proportion to such use.

**3.3.3 Destruction by Fire or Other Casualty.** If a party wall, fence or roof is destroyed or damaged by fire or other casualty, any Owner who has used the wall, fence or roof may restore it, and if the other Owners thereafter make use of the wall, fence or roof, they shall contribute to the cost of restoration thereof in proportion to such use. Such contribution shall be made without prejudice, however, to the right of the Owner who originally restored the wall, fence or roof to call for a larger contribution from such other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

**3.3.4 Weatherproofing.** Notwithstanding any other provision of this section, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**3.3.5 Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

**3.3.6 Arbitration.** In the event of any dispute arising concerning a party wall, fence or roof, or under the provisions of this section, such dispute shall be submitted in writing to the Architectural Control Committee, which shall then consider the submission and advise the Board of Directors. The written decision of the Board of Directors shall be final and binding on the parties.

### **3.4 Owners' Easements**

**3.4.1 Easement to Common Area.** Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot.

**3.4.2 Utilities Easements.** There is reserved an easement over, under and through each unit and residence Lot and the Common Area for installation, maintenance and repair of each and every utility service, including, but not limited to, sewage, drainage, water, electricity, gas, telephone and television service for this project and each additional project referred to in that certain Declaration of Reciprocal Covenants and Easements-Hiller Highlands, Series No. AY-70422, recorded June 8, 1966, at Reel 1782, Image 970, Declaration of Covenants, Conditions and Restrictions, Hiller Highlands Recreational Area recorded July 19, 1966 as Recorder's Series AY-86411, Official Records of Alameda County. The exercise of the easements reserved by this Section 3.4 shall not result in damage to existing improvements including lawns, shrubbery, or trees, unless adequate compensation is made for any such damage.

**3.4.3 Easements for Party Walls and Encroachments.** Whenever two Residences are located adjacent to each other with two separate walls, defined as a Party Wall in Section 3.3, or whenever Residences are located adjacent to the Common Area, such Residences are hereby granted exclusive appurtenant easements for encroachments for overhanging eaves or roofs as originally constructed and for encroachments due to settlement or shifting of structures for any cause whatsoever and encroachments due to construction, reconstruction or repair of the Residence which may so encroach, and for utility meters, lines, wires, pipes and conduits, over and on the adjoining Lot or Common Area, as servient tenement, with

the contiguous Lot as dominant tenement.

### **3.5 Repair and Reconstruction**

**3.5.1 Damages Limited to One Residence/Lot.** If any improvements on a Lot are damaged or destroyed by fire or any other calamity, and said damage is limited solely to a particular Residence, the insurance proceeds from an Association blanket physical damage insurance policy, if any is adopted, shall be paid to the Owner of said Residence, and the Mortgagees thereof, as their respective interests may appear, and such Owner or Mortgagee shall use said proceeds to rebuild or repair the damage. In the event that the insurance proceeds are insufficient to complete such rebuilding or repair, the Owner shall be responsible for the payment of such additional sums as may be necessary to complete such rebuilding or repair. In the event said Owner does not commence such rebuilding or repair within a reasonable time, the Association may bring suit for an injunction to compel the Owner to perform said rebuilding or repair.

**3.5.2 Damages Extend to Two or More Lots.** If any improvements on a Lot are damaged or destroyed and such damage or destruction extends to the exterior of the improvements on two or more Lots, the insurance proceeds from an association blanket physical damage insurance policy, if any is adopted, shall be paid to the Association. Each Owner shall thereupon contract for the repair or rebuilding of the damaged improvements, in accordance with Article 7 of this Declaration. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of the damaged improvements, the board shall pay the insurance proceeds to an Insurance Trustee to be approved by the Board, which proceeds shall be held for the benefit of the Owners of the damaged Lots and their Mortgagees, as their respective interests may appear, and pursuant to an insurance trust agreement consistent with the provisions of the Declaration, approved and executed by the Board.

In such instance that any such insurance proceeds are insufficient, the board shall, as soon as possible but no later than thirty (30) days after the occurrence of the determination that the insurance proceeds are insufficient, call a special meeting of the Owners for the purpose of determining whether to impose a special assessment, pursuant to the procedures of Section 6.3 for the costs of repairing and reconstructing the damaged or destroyed improvements, which costs are in excess of the available insurance proceeds. In the event that the Owners determine not to imposed such a special assessment, each Owner of that Lot on which the improvements have been damaged or destroyed shall be responsible for the proportionate share of such costs in excess of the available insurance proceeds, if any.

To the extent that there are any insurance proceeds unexpended relative to such loss, such proceeds shall be distributed to the Owners of the damaged Lots and the mortgagee or beneficiary of any mortgage or deed of trust upon any such Lot, as their interests may appear, according to the respective fair market value of the damaged Lots at the time of the destruction as determined by an independent appraisal.

**3.5.2.1** In the event that damage or destruction of improvements on adjoining Lots requires the repair or rebuilding of a party wall, party roof or other building component which provides weatherproofing protection to an improvement on an adjoining Lot (hereinafter referred to as a "weatherproofing component"), the following requirements shall apply:

**3.5.2.1.1** Each Owner of a Lot on which an improvement has been damaged or destroyed shall commence the repair and/or rebuilding of the improvement so damaged or destroyed, in accordance with approved plans under Article 8 of this Declaration, within ninety (90) days of the commencement of framing of a residence on an adjoining Lot or, in the case of partial damage or destruction, within ninety (90) days of the commencement of repair to a building component on an adjoining Lot which depends for weatherproofing protection, in whole or in part, upon the repair of a weatherproofing component on the Owner's Lot. In the event the weatherproofing component to be repaired on the Owner's Lot is a party wall, roof or fence, the cost of repair shall be determined in accordance with Section 3.3 of this Declaration.

**3.5.2.1.2** If an Owner of a Lot on which a weatherproofing component has been damaged or destroyed fails to commence repairs or rebuilding within the time frame set forth in Section 3.5.2.1.1, that owner shall be responsible to pay for the cost of installing necessary weatherproofing on the building component(s) on adjoining Lot(s), as determined by the Board of Directors. The necessary weatherproofing may include, but shall not be limited to, the cost of installing plywood sheathing on the exterior of the improvement on the adjoining Lot(s). The Owner shall make payment to the Association in full or in accordance with a payment plan approved by the Board of Directors, in its discretion, within thirty (30) days of written notice from the Association of the scope and cost of the necessary weatherproofing. In the event an Owner of a Lot who has been given written notice of the cost of necessary weatherproofing fails to make payment to the Association in accordance herewith, the Association may pay for the cost of installation of the necessary weatherproofing and shall assess the cost thereof to the Owner as a Reimbursement Assessment in

accordance with Section 6.4 of this Declaration.

**3.5.2.2** Except for reasonable extensions of time that may be granted in the discretion of the Board of Directors, as provided in this section, the Owner of a Lot with a damaged or destroyed improvement must commence repair or rebuilding of the damaged or destroyed improvement within one year of the date of the damage or destruction. In the event a Lot with a damaged or destroyed improvement is sold prior to the commencement of repair or rebuilding, the repair or rebuilding of the damaged or destroyed improvement must commence no later than one year after the first close of escrow on the sale of the Lot after the damage or destruction occurred.

**3.5.2.3** In each case where the repair or rebuilding of a damaged or destroyed improvement has commenced under this section, the improvement shall be brought to a watertight shell within one hundred eighty (180) days of commencement of the repair or rebuilding. The Board of Directors shall grant an Owner who has commenced repair or rebuilding reasonable extensions of time for inclement weather, if requested by the Owner in writing. In the event an Owner fails to bring the damaged or destroyed improvement on his or her Lot to a watertight shell within one hundred eighty (180) days of commencement of the repair or rebuilding, plus any extensions of time granted by the Board of Directors hereunder, the owner shall immediately furnish to the Association a completion bond in an amount adequate to bring the improvement upon the Owner's Lot to a watertight shell plus any additional amounts necessary to provide adequate weatherproofing to the improvements on adjoining Lot(s) under paragraph 3.5.2.1.

**3.5.2.4** In all cases where damage or destruction of an improvement occurs on a Lot, the Owner shall immediately remove all damaged improvements, including, but not limited to, any portions of the foundations which protrude from the ground on said Lot and shall leave the Lot in a safe condition and visually compatible with the landscaping and design of adjoining Lots and/or the Common Area. In the event the Owner fails to comply with the requirements of this paragraph, the Association may, after thirty (30) days written notice to the Owner of its intent to make repairs and the estimated cost thereof, undertake removal of the foundations, safeguarding the condition of the Lot and ensuring the visual compatibility of the Lot with the landscaping and design of the adjoining Lots and/or Common Area. The actual cost of the repairs, plus the cost of any necessary professional services incurred by the Association, shall be assessed to the Owner as a Reimbursement Assessment in accordance with Article 6, Section 6.4 of this Declaration.

**3.5.2.5** In the event an Owner fails to comply with the requirements of this Section 3.5, the Association may, in addition to any other remedies or rights provided herein or which the Association may have in law or in equity, bring an action for an injunction to compel the Owner to repair or rebuild and/or post a bond to cover the cost of any repair or rebuilding required under this section. The Association shall be entitled to collect from an Owner attorney's fees and costs incurred by the Association as a result of an action by the Association to bring an Owner in compliance with this Section 3.5.

**3.5.2.6** Notwithstanding the above provisions, the Board of Directors may, in its discretion, grant to an Owner reasonable extensions of any time periods set forth above for delays beyond the control of the Owner caused by the City of Oakland, such as a delay in the approval of plans or issuance of building permits or delay caused by the failure of the Owner's insurance company to release funds to the Owner for the repair or rebuilding.

**3.5.2.7** Notwithstanding any other provision of this section, an Owner who by his or her negligent or willful act or omission causes damage or destruction to an adjoining Lot or improvement thereon shall be responsible for the cost of the repair or rebuilding thereof plus any other damages arising therefrom in accordance with general principles of law.

**3.5.3 Insurance.** Nothing herein shall be construed to require the Association to purchase any blanket policy or to in any way limit individual members from maintaining any amount or kind of insurance they deem necessary.

### **3.6 Association's Right of Entry and Repair**

The Association or its agents may enter any Lot whenever such entry is reasonably necessary in connection with the performance of any maintenance or repair for which the Association is responsible. The Association's right of entry under this Declaration shall be immediate in case of an emergency originating in or threatening the Lot or other Lots or Common Area or any person, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

In all non-emergency situations, the Association or its agents shall furnish to the Owner, and his or her lessee, if applicable, two (2) days' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing therein.

The Association shall have the right, subject to the consent of an Owner, at any time and from time to time, at its own cost, to cut and remove any trees or shrubs, or remove or trim the branches of any trees or shrubs, on any Lots or any portion of the Common Area if it deems it desirable to do so for the benefit of other Lots or for the general benefit of the Association.

#### **ARTICLE 4. RIGHTS, EASEMENTS AND RESTRICTIONS: COMMON AREA**

##### **4.1 Permitted Uses, Construction and Alteration of Improvements**

The Common Area shall be held, maintained and used to meet the common interests of the members of the Association, their tenants and guests as provided by this Declaration.

**4.1.1 Limitation on Construction.** No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, shall make or create any excavation or fill upon or shall destroy or remove any tree, shrub or other vegetation upon any Common Area, except in Patio Gardens, in which case the Owner's activities must be done in conformity with Section 4.5. In those areas of individual residence Lots where, pursuant to Section 5.6.7, the Association has jurisdiction over landscaping, the Association shall exercise such control over the installation, maintenance and removal of landscaping as if in fact such areas were a part of the Common Area.

**4.1.2 Damage or Destruction of Common Area or to Landscaped Areas of Individual Lots Under the Jurisdiction of the Association.** In the event of any damage or destruction to the Common Area or to landscaped areas of individual Lots under the jurisdiction of the Association or any of the improvements or facilities located thereon, the Association shall immediately undertake to repair and reconstruct any such damage or destruction substantially in accordance with the original design or standard of construction of the damaged or destroyed Common Area, improvement or facility. The Association shall utilize all available insurance proceeds to accomplish such repair or reconstruction.

In the event the insurance proceeds are insufficient to cover all of the costs for such repair or reconstruction, the Board shall pay the insurance proceeds to a savings and loan association, bank or trust company as may be approved by the Board, which proceeds shall be held for the benefit of the Owners and their mortgagees, as their respective interests may appear, and pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall then, utilizing such engineering and design consultants as it deems necessary, prepare a report evaluating the extent of reconstruction or repair of such damage or destruction which is reasonably possible solely utilizing the aggregate sum of the total available insurance proceeds. As soon as possible, but no later than sixty (60) days after the occurrence of the damage or destruction, the Board shall present the report to the Lot Owners and notify all Mortgagees of the findings of said report and call a special meeting of the Owners. At such special meeting the Owners shall determine by a majority vote whether to utilize solely the available insurance proceeds to reconstruct the damage or destruction in accordance with the recommendations of the report of the Board or whether to impose a Special Assessment pursuant to Section 6.3 to reconstruct the destroyed or damaged facilities beyond the recommendations of the report of the Board. Any determination to impose a Special Assessment shall be decided by a vote of a majority of the voting power of the Association. Any such additional Special Assessment shall be levied equally as to each Lot and be a lien on the Lot against which said assessment is levied and enforced pursuant to the terms of Section 6.6.

##### **4.2 Owners' Non-Exclusive Easements of Enjoyment in Common Area**

**4.2.1 Non-Exclusive Right and Easement of Use and Enjoyment.** Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area (except for Patio Gardens appurtenant to other Owners' Lots), including easements for ingress and egress to said Owner's Lot for pedestrians, vehicles, utility lines, pipes, wires and conduits which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

**4.2.1.1** The Board, after giving an Owner notice of a violation of the Governing Documents or Rules and an opportunity to be heard, shall have the right to suspend the voting rights and right to use the Common Area by an Owner and his tenants and guests pursuant to Section 5.10 of this Declaration.

**4.2.1.2** Any portion of the Common Area designated as Parking Area on the Subdivision Map shall be reserved for the exclusive use of the guests, invitees or agents of the Residents for temporary periods only, subject to all of the vehicular restrictions and conditions contained elsewhere within this Declaration and subject to such duly adopted Parking Rules as the Association may have in force.

**4.2.1.3** There shall be no obstruction of any part of the Common Area and nothing shall be stored, kept or parked in the Common Area except in the areas designated as Parking Areas on the Map without the prior

written consent of the Board. Each Owner shall avoid any damage to the Common Area and shall be responsible for repairing any damage or injury to the Common Area caused by him, his tenants, his guests, his invitees, his licensees, or other agents.

**4.2.1.4** Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any of the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on the Common Area or which would be in violation of any governmental statute, ordinance, rules or regulations. No waste shall be committed in the Common Area.

**4.2.2 Easements for Encroachments.** Each Lot adjacent to the Common Area is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or other similar cause or any encroachment due to building, roof, fireplace, balcony, or deck overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

**4.2.3 Association Easements.** There is hereby reserved to the Association or its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the Bylaws, Articles, or Rules, if any.

**4.2.4 Covenants Running with the Land.** Each of the easements provided for in this Declaration was deemed to be established upon the recordation of the original version of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the properties which are the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Lots may, but shall not be required to, set forth said easements.

### **4.3 Delegation of Right of Use**

Any Owner may delegate his rights of enjoyment in the Common Area and in the privileges of the Association to the members of his family who reside within his Lot, to contract purchasers from such Owner, to any of his tenants who reside therein under a leasehold interest and to his guests, subject, however, to the provisions of this Declaration and to the Articles, Bylaws and Rules of the Association. The rights and privileges of such persons are subject to suspension for the same reasons and in the same manner as this Declaration provides regarding the suspension of the rights and privileges of Owners in the Project.

### **4.4 Restriction of Severability of Common Area**

The interest of each Lot Owner in the use and benefit of the Common Area owned by said Owner shall not be sold, conveyed or otherwise transferred by said Lot Owner separately from the ownership interest in said Lot. Any sale, transfer or conveyance of such Lot shall operate to transfer the appurtenant right to use said Common Area without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Area and the facilities located thereon. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, whether by deed, gift, devise or operation of law, for their own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests, and causes of action for judicial partition of any ownership interest in the Common Area and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

### **4.5 Patio Garden License**

The Association hereby grants a license to each residence Lot which residence Lot has adjacent to such Lot a portion of a Common Area Lot which has been enclosed by the original developer or the successors to the developer by a wall, fence or other such enclosure for the use as a rear yard or side yard to that individual Lot. The Lot Owner shall be entitled to use such area as defined on the development plan for the Project as a patio garden area and shall be responsible for the landscaping of such area and the maintenance, repair and restoration of any such landscaping and shall maintain such areas to the standards established by the

Board. All such landscaping shall meet with the approval of the Board of Directors of the Association, with the advice and assistance of the Landscape Committee as provided for in Section 5.6.11. All costs of maintenance and repair of such landscaped areas shall be borne by the Lot Owner having the exclusive license to use such area. No Lot Owner shall extend or increase the area of said patio garden license as originally established by the development plan without the prior written consent and approval of the Board of Directors, and there shall be no construction of any physical improvements on such areas without prior written consent and approval of the Board of Directors. If any landscaping within a patio garden does not comply with the approval of the Board, or such landscaping should become a nuisance to the other Lot Owners because it is not properly cultivated, maintained, sprayed, trimmed or otherwise cared for, then the Board shall give notice to the Lot Owner specifying the nature of the claimed deficiencies. The Lot Owner shall be entitled to a hearing before the Board regarding such claimed deficiencies. If, after such notice and hearing, the Board determines that the claimed deficiency is substantiated, then the Board shall be entitled to require the Lot Owner to undertake such work as to comply with the reasonable standards of the Board. If the Lot Owner does not comply with the requirements of the Board within a reasonable time, then the Board may either undertake such work on behalf of such Owner and charge the Owner for the reasonable and actual costs thereof as a Reimbursement Assessment, or the Board may proceed to bring such action in law or equity as it deems appropriate to enforce the rights of the Association.

#### **4.6 Association's Right of Entry and Repair**

The Association or its agents may enter any portion of the Exclusive Use Common Area whenever such entry is reasonably necessary in connection with the performance of any maintenance or repair for which the Association is responsible. The Association's right of entry under this Declaration shall be immediate in case of an emergency originating in or threatening the any Lot or Common Area or any person, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

In all non-emergency situations, the Association or its agents shall furnish to the Owner, and his or her lessee, if applicable, two (2) days' written notice of its intent to enter the Exclusive Use Common Area, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing therein.

The Association shall have the right, subject to the consent of an Owner, at any time and from time to time, at its own cost, to cut and remove any trees or shrubs, or remove or trim the branches of any trees or shrubs, on any Lots or any portion of the Common Area if it deems it desirable to do so for the benefit of other Lots or for the general benefit of the Association.

### **ARTICLE 5. THE ASSOCIATION**

#### **5.1 The Organization**

The Association is a nonprofit mutual benefit corporation charged with the duties and empowered with the rights set forth herein and in the Articles, and this Declaration, the Articles and the Bylaws shall govern its affairs.

#### **5.2 Membership**

**5.2.1 Members.** Each Owner of a Residence, by virtue of being an Owner, shall be a Member of the Association, or, in the event of its dissolution, a Member of the unincorporated association succeeding to the Association. The membership shall be appurtenant to and may not be separate from the ownership of any Lot which is subject to assessment by the Association. Upon termination of Lot Ownership, membership in the Association shall also terminate. Ownership of a Lot shall be the sole qualification for Association membership. The membership of an owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer is void.

**5.2.2 Members' Duty to Inform the Association of Change of Ownership.** Every seller and buyer of a residence, whether by contract sale, installment sales agreement, or lease with option to purchase shall notify the Association within 60 days of the execution of the sales documents of the intended transfer. Failure to so notify the Association may result in the imposition of a fine in an amount determined from time to time by the Board of Directors.

**5.2.3 Members' Rights and Duties.** The rights, duties, privileges and obligations of all Members of the Association, or of the succeeding unincorporated association, shall be those set forth in, and shall be

exercised and imposed in accordance with, the provisions of this Declaration, the Articles, Bylaws and Rules.

### **5.3 Voting**

Only members of the Association shall be entitled to vote. The voting privileges of each Member shall be as provided herein. Any action by the Association which must have the approval of the Members before being undertaken shall expressly require the vote or written assent of a prescribed percentage, as more particularly stated within this Declaration.

**5.3.1 Voting Rights.** Members shall be entitled to cast one vote or, on the occasion of the annual election of Directors, to cast one ballot for each Lot owned. When more than one person owns a single residence Lot, all Owners shall be Members of the Association. However, the vote or ballot for each Lot must be cast as an individual unit and fractional votes or ballots shall not be allowed. Moreover, when more than one person holds an interest in a single residence Lot, the vote or ballot for such Lot shall be exercised as they among themselves determine, as provided for in the Bylaws. In no event shall more than one vote or one ballot be cast with respect to any such Lot.

Voting rights may be exercised by the Lot Owner's conservator, by the guardian of his estate, by the parent(s) entitled to custody of an Owner in the case of the Owner being a minor, or, during the administration of his estate, by the executor or administrator of a deceased record Lot Owner where the latter's interest in said property is subject to administration by his estate.

### **5.4 Assessments and Duties**

Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of Article 6 of this Declaration and shall be enforced pursuant to the provisions of Section 6.6 of this Declaration.

### **5.5 Board of Directors**

A Board of Directors shall govern the Association. The authorized number of Directors shall be as set forth in the Bylaws of the Association. At the Annual Membership Meeting in 2001 and in each odd numbered year thereafter, three directors shall be elected for a term of two years each. At the Annual Meeting in 2001 only, two directors shall be elected for a term of one year each. At the Annual Meeting in 2002 and in each even numbered year thereafter, two directors shall be elected for a term of two years each. Cumulative voting shall not be permitted. The term of each elected Director shall be until the next Annual Membership Meeting or adjournment thereof, as provided for in the Bylaws. Any vacancy occurring on the Board of Directors may be filled as provided by and in accordance with the Bylaws. Each Director shall be an Owner and a Member of the Association and may serve a maximum of three consecutive terms. The Board of Directors shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members. All meetings of the Board of Directors shall be open to attendance by all members of the Association, except for meetings in executive session that have been called to discuss litigation or potential litigation, formation of contracts with third parties, personnel matters and/or member discipline.

### **5.6 Duties of the Association**

The Association shall have the obligations and duties, subject to and in accordance with this Declaration, to do and perform the following acts for the benefit of its Members and for the maintenance and improvement of the subject property.

**5.6.1 Members.** The Association shall accept all Lot Owners as Members.

#### **5.6.2 Annual Membership Meetings and Special Membership Meetings.**

The Association shall hold an Annual Membership Meeting on the first Wednesday in April of each year or otherwise as provided by and in accordance with the Bylaws of the Association. Special Membership Meetings for any purpose or purposes whatsoever may be called as provided by and in accordance with the Bylaws. Notice of such special meetings and the conduct thereof shall be as provided by and in accordance with the Bylaws.

**5.6.3 Common Area Maintenance.** The Association shall maintain, or provide for the maintenance of, all Common Areas and easements and for the maintenance of landscaping in certain areas of individual Lots as set forth in Section 5.6.7 and all improvements of whatever kind and for whatever purpose located thereon.

**5.6.4 Operation of Common Areas.** The Association shall operate and maintain or provide for the operation and maintenance of Common Areas. The Association shall keep all improvements of whatever kind and for whatever purpose from time to time located on the Common Areas, including all utility lines,

pipes, conduits, irrigation systems, storm drainage channels, and facilities located thereon and owned by the Association, in good order and repair. The Association's obligation to maintain, repair and restore the Common Area shall include the obligation to maintain, repair and restore underground water, sewer, and storm drain laterals, even though such laterals may be located underneath residence Lots.

**5.6.5 Exterior Maintenance of Residences.** The Owners of residence Lots are responsible for all maintenance, repair and restoration of said residence Lots; provided, however, as set forth in Section 5.6.7 below, the Association shall have the exclusive right, obligation and duty to maintain, repair and restore landscaping in certain areas of individual residence Lots as defined in said Section 5.6.7.

**5.6.6 Responsibility of Association.** The Association shall have the obligation to maintain, repair and restore the Common Areas and all improvements therein, as well as the landscaping in those certain areas of individual residence Lots which fall under its jurisdiction as set forth in Section 5.6.7. However, the expense of any extraordinary maintenance, repair or restoration of such areas caused by the intentional or negligent act of an owner, other resident, tenant, guest or agent shall all be paid by such owner, and such owner may be assessed individually for the cost thereof in accord with Section 5.7.1 hereof.

**5.6.7 Maintenance of Landscaping.** The Association shall have the obligation and duty to maintain, repair and restore all landscaping in the property subject to this Declaration, including all landscaping within the Common Area and that landscaping situated on individual residence Lots which landscaping is not situated within an enclosed area of such Lots. Examples of areas for which the Association is not responsible include but are not limited to patio entryways, atriums, decks, patio rear yards and other such enclosed areas. The areas of Lots situated under cantilevered decks on the residence Lots, which areas are not enclosed, shall be included in the area to be maintained by the Association.

Each Lot Owner hereby grants the Association a non-exclusive easement for entry on each such residence Lot during reasonable hours in order to undertake such obligations of maintenance, repair and restoration. The Landscape Committee of the Association shall delineate all the areas on residence Lots upon which the landscaping is to be maintained by the Association on the development plan for Tract 3358 and the Board of Directors shall approve such delineation. All costs of such maintenance on such areas within individual residence Lots, which area shall be adjacent to Common Area Lots and/or the private streets and public streets within the Property shall be paid for through the Association's annual assessments. Such landscaping and maintenance on residence Lots shall inure only to the benefit of the entire Association and not to an individual residence Owner and all such maintenance and landscaping shall be done at the direction of the Board of Directors of the Association, with the advice and assistance of the Landscape Committee as provided for in Section 5.6.11, and by such employees or contractors as the Board of Directors shall appoint for such purposes. In no event shall an Owner remove or alter such landscaping without prior approval of the Board.

The Board of Directors of the Association shall have the power to engage in or contract for landscaping work, clean-up and debris removal on property adjacent to the Project not owned by the Association or the Lot Owners, with the consent of the property owner of such adjacent Property, in the event that the Board determines that such landscaping, clean-up or debris removal is reasonable and appropriate for the enjoyment of the Lots and the Common Areas by the Owners of Lots in the Subject Property. The Board of Directors shall be authorized to expend funds from the Association's General Funds in order to accomplish such work.

**5.6.8 Payment of Taxes.** The Association shall have the authority to pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to it, to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that any such taxes are paid or that a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes.

**5.6.9 Insurance.** The Association shall have the authority and duty to obtain and maintain in force the following policies of insurance:

**5.6.9.1 Physical Damage to Property:** Fire and extended coverage insurance on the Common Area and all buildings, improvements and fixtures in the Common Area for the full replacement cost thereof, and such other hazard insurance as the Association may deem desirable. In addition, the Association may, but shall not be required to, obtain a blanket policy of fire and extended coverage insurance covering all Residences constructed on each Lot, with limits equal to one hundred percent (100%) of the present replacement costs of such Residences as originally constructed. The Association shall also insure any property owned by the Association, whether real or personal, against loss or damage by fire and such other hazards as the Board may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be

payable to, the Association. Any blanket policy of fire and extended coverage insurance covering the Residences shall include the respective Owners of such Residences and the Association as separately protected insureds, and the proceeds thereof shall be payable to the Association and said owners for the purposes set forth herein. The Association for the repair shall use the insurance proceeds or replacement of the property for which the insurance was carried or otherwise disposed of as hereinafter provided. Insurance on the contents of Residences and for any additions to or alterations thereof which increase the value of the Residence as originally constructed shall not be the responsibility of the Association.

**5.6.9.2 Public Liability Insurance:** Comprehensive Public Liability Insurance shall be carried, with limits of at least Two Million Dollars (\$2,000,000), pursuant to California Civil Code Section 1365.9 (b)(2)(A), or comparable superseding statute, insuring against liability for bodily injuries and property damage arising from the activities of the Association or with respect to the Common Area or other property under its jurisdiction. The Board may increase the policy limits when it deems advisable and prudent for the best interests of the Association and its Members. The liability insurance referred to herein shall include the Association, the Board, all Board Committees and their respective members and employees and the Members of the Association (as a class) with respect to any liability arising out of the maintenance and use of any Common Area or areas under the jurisdiction of the Association. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limit stated therein.

**5.6.9.3 Directors and Officers Liability Insurance:** Liability Insurance shall be carried, with limits of at least five hundred thousand dollars (\$500,000), pursuant to California Civil Code Section 1365.7 (a)(4)(A), or comparable superseding statute, insuring the Association's directors and officers against liability for their negligent acts or omissions.

**5.6.9.4 Fidelity Bonds:** The Association shall have the authority and duty to obtain fidelity bonds for any director, officer, employee or other person charged with the management or possession of the funds or other property of the Association against any loss from malfeasance or dishonesty of any such director, officer, employee or agent.

**5.6.9.5 Other Insurance:** The Association is authorized to obtain other insurance, including Worker's Compensation insurance, as the Board shall deem necessary or expedient to carry out its functions as set forth in this Declaration, the Articles and Bylaws.

**5.6.9.6 Premiums:** Premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association. The Board shall review the limits of all insurance policies of the Association at least once a year, and increase said limits as the Board deems necessary or appropriate.

**5.6.9.7 Insurance Committee:** For assistance and advice in obtaining and evaluating insurance policies, the Board may create an Insurance Committee.

**5.6.10 Rule Making .** The Association shall have the duty to make, establish, promulgate, amend, repeal and enforce the Rules as provided in Section 5.9.

**5.6.11 Architectural Control Committee; Landscape Committee; Streets, Parking and Lighting Committee.** The Association, through the Board, shall have the duty to appoint and the right to remove members of the Architectural Control Committee; Landscape Committee; and Streets, Parking and Lighting Committee and to insure that at all reasonable times there are such duly constituted and appointed committees. The members of these and any other committees appointed by the Board shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any committee function.

**5.6.12 Enforcement of Restrictions and Rules.** The Association shall have the duty to take such other action, whether or not expressly authorized by this Declaration, including the hiring of legal counsel and undertaking legal action, as may be reasonably necessary to enforce the covenants, conditions and restrictions contained herein, the Rules and to enforce, construe or interpret the governing documents.

**5.6.13 Budget and Annual Report.** Regardless of the number of Members or the amount of assets of the Association, the Board shall prepare for the Association:

**5.6.13.1** A pro-forma operating statement (budget), a copy of which shall be distributed to Lot Owners at least sixty (60) days after the close of the fiscal year consisting of the following: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of changes in financial position for the fiscal year; and (iv) any information required to be reported under Section 8322 of the Corporations Code. An independent licensed accountant shall prepare the annual report for any fiscal year in which the gross income to the Association exceeds \$75,000.00.

**5.6.14 Examination of Records.** The Association shall maintain the membership register, books of

account and minutes of meetings of the Members, of the Board, and of committees of the Board available for inspection and copying for any Member, or for a duly appointed representative of the Member, and at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board may prescribe. In accordance with the Bylaws, the Board shall establish reasonable rules with respect to the notice to be given to the custodian of the records by the Members desiring to make the inspection, the hours and days when such inspection can be made, and the payment to be made by a Member for the costs of inspecting or reproducing documents. The Board shall not allow any Member to copy the Membership Register unless the Board determines that the Member intends to inspect or copy the Membership Register for a valid Association purpose.

**5.6.15 Powers and Duties.** The Association shall perform each and every duty required of it by this Declaration, the Articles and Bylaws.

## **5.7 Powers and Authority of the Association**

The Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of said Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. Without in any way limiting the generality of the foregoing, the Board of Directors, on behalf of the Association, shall have the power and authority to do the following:

**5.7.1 Right of Entry and Enforcement.** In the event that the Owner of a Lot fails to maintain and repair any portion of the Lot as required by this Declaration, the Board shall have the right, after notice and opportunity for a hearing before the Board by the Owner regarding any allegation of failure to maintain or repair, to enter upon the subject Lot to undertake such maintenance or repair. The cost of such maintenance or repair shall be assessed against said Owner as a Reimbursement Assessment. The Association shall also have the power and authority from time to time in its own name, on its own behalf or on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of said Declaration. The costs of any such action or suit, including reasonable attorneys' fees, shall be paid to the prevailing party.

**5.7.2 Easements and Rights of Way.** The Association shall have the power and authority to grant and convey to any third party easements and/or licenses for use and right of way in, on, over or under any Common Area conveyed or otherwise transferred to said Association or under its jurisdiction upon the affirmative vote or written consent of two thirds (2/3) of its voting Members.

**5.7.3 Contracts with Adjoining Associations or Land Owners.** The Association shall have the power and authority to enter into contracts with owners of lands adjoining or near the project and with associations having powers with reference to said land similar to the powers held by the Association. Said contracts may provide, among other things, for the joint installation, maintenance, and repair of facilities benefiting the project and the adjoining land and for the joint employment of maintenance, professional and management services for the joint discharge of any of the duties of the parties to such contract. The right conferred upon the Association to contract with land owners of adjacent lands or associations having powers with reference to such adjacent lands shall include the right to merge with and into such associations, providing the Association shall first have the prior written consent or votes residing in at least two-thirds (2/3) of the voting power of the Association.

**5.7.4 Employment of Manager.** The Association shall have the power and authority to employ the services of a manager or other employee, or a professional manager or management company, subject to the direction and control of the Board of Directors, to manage and carry out the affairs of the Association, and, to the extent not inconsistent with the laws of the State of California and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the manager any of its powers; provided, however, that the Board may not delegate to any manager its responsibility to levy fines, hold hearings or impose discipline or to do anything else which is not delegable by the Board as a matter of law. In no event shall any management agreement be for a term greater than three (3) years and said agreement shall provide for termination for cause on a maximum of ninety days written notice.

**5.7.5 Services.** The Association shall have the power and authority to provide for or engage the services of others, including grounds keepers, painters, plumbers and other maintenance personnel, to provide for the

maintenance, protection and preservation of the Common Area and Lots as the nature and character of the Common Area and Lots may require; provided, however, that no contract for such services shall be for a duration of more than one year unless approved by a majority of the Members. In no event shall such contract be for a term greater than three (3) years. Said contract shall provide for termination for cause on a maximum of ninety days written notice.

**5.7.6 Utilities.** The Association shall have the power and authority to contract, use and pay for utility services to the Common Area and its facilities and to residence Lots to the extent they are not separately metered; provided, however, that any such contract shall not exceed the shortest term for which the supplier will contract at the regular rate. The cost of said utilities and utility services for residence Lots may be recovered from the owners by Individual Reimbursement Assessments.

**5.7.7 Other Property.** The Association shall have the power and authority to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise.

**5.7.8 Dedication.** The Association shall have the power and authority to dedicate any of its property to an appropriate public authority for public use, provided that any such dedication shall have the approval either by affirmative vote or written consent of two-thirds (2/3) of the voting power of the Association.

**5.7.9 Maintenance of Project.** Except as otherwise provided by law, the Association shall have the power and authority to use the operating fund of the Association for the maintenance, repair, care, preservation and painting of Common Area improvements. Said operating fund may also be used to pay for the purchase of such equipment, tools and supplies and other personal property as the Board deems necessary for use in such maintenance and repair.

**5.7.10 Delegation.** The Association shall have the power and authority to delegate to any such committees, officers or employees as it deems necessary and proper any of its powers other than those established pursuant to Sections 5.9 and 5.10 and pursuant to Section 7.5 with respect to its exclusive power to give required written authorization for architectural changes, including repainting and re-roofing.

## **5.8 Capital Improvements**

The Board may, on its own motion, move for the construction, installation or acquisition of a capital improvement. One-fifth of the Owners may also petition the Association in writing for the construction, installation or acquisition of a capital improvement on the Common Area. For any capital improvement which the Board has approved, the Board shall obtain firm bids on the total cost of constructing, installing or acquiring the proposed capital improvement. The lowest acceptable bid or bids shall be deemed the estimated costs of such capital improvements. Such cost shall be levied as a Capital Improvement Assessment pursuant to Section 6.5. The Board shall establish a Capital Improvements Account in a financial institution selected by the Board in which the Capital Improvement Assessments shall be deposited, separate and apart from all other funds collected by the Association.

## **5.9 Project Rules**

**5.9.1 Rulemaking Power.** Subject to the provisions of this Declaration, the Board shall from time to time enact and amend such Rules as the Board feels are necessary for the management of the Project. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, Residence Lots, signs, collection and disposal of refuse, minimum standards of maintenance of property, parking and traffic restrictions, limitations on maintenance of landscaping or other improvements on any property which obstructs the vision of motorists or which create a hazard for vehicular or pedestrian traffic or which obstruct any scenic view; the terms and conditions upon which a Lot may be rented or leased by an Owner (including, but not limited to, the adoption of a standard lease or rental agreement to be used in the leasing or renting of all Lots) and any other subject or matter within the jurisdiction of the Association as provided in this Declaration. Any rule which purports to restrict or abridge, whether directly or indirectly, the right of an owner to sell or lease his Lot must include uniform, objective standards for invoking the restrictions upon sale or lease, none of which shall be based upon the race, color, creed, national origin, marital status, familial status, physical disability or sex of the vendee or lessee. Said Rules may restrict and govern the use of Common Areas by any Member and his family, guest, licensee or lessee of such Member.

**5.9.2 Distribution of Rules.** A copy of said Rules, as they may from time to time be adopted, amended or replaced shall be mailed or otherwise delivered to each Member. No Rules may be adopted which materially affect the rights, preference or privileges of any Owner as specifically set forth herein. Where the provisions of this Declaration and any Rule adopted by the Association are in conflict, the provisions of this Declaration shall prevail.

**5.9.3 Amendment to Rules.** The Board may amend any Rules previously adopted by the Board from time to time by majority vote thereof. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the Rules shall become effective thirty (30) days from the date of adoption thereof by the Board.

## **5.10 Enforcement of Governing Documents**

**5.10.1 Breach of Rules or Regulations.** In the event of a breach of any Rule or of any of the Restrictions contained in this Declaration by an Owner, his family, guests, employees, invitees, licensees or tenants, the Board, for and on behalf of all other Members, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action or suspension of the Owner's right to use the Common facilities of the Project or suspension of the Owner's voting rights, provided, however, that such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for an infraction of such Rules. In addition to the other remedies herein set forth, the Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in amounts from time to time determined and distributed to Owners in the form of a fine schedule.

Prior to imposing any fine provided herein for breach of any Rules enacted hereunder or restrictions contained in this Declaration, the Board shall send written notice to the Lot Owner specifying the nature of the infraction and provide an opportunity to the Lot Owner for a hearing before the Board regarding such infraction and the fine to be imposed.

In the event that the Board determines that said infraction has occurred and that a penalty shall be imposed, after a reasonable opportunity for a hearing has been provided, the determination of the Board shall be final. In the event legal counsel is retained or the Board pursuant to this paragraph institutes legal action, any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

### **5.10.2 Alternative Dispute Resolution**

**5.10.2.1** Before the Association or Owner brings an action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages (other than Association assessments) not exceeding Five Thousand Dollars (\$5,000.00), relating to the enforcement of the Governing Documents, the parties shall endeavor to submit the matter to a form of alternative dispute resolution such as mediation or arbitration as provided in Section 1354 of the California Civil Code, or comparable superseding statute. The form of alternative dispute resolution may be binding or non-binding at the option of the parties. Any party to such dispute may initiate this process by serving on another party to the dispute a Request for Resolution ("Request"). The Request shall include (1) a brief description of the dispute between parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request shall be made in the same manner as prescribed for service in a small claims court as provided in Section 116.340 of the Code of Civil Procedure as follows: (1) delivery of the Request to the party in person; or (2) use of substituted service as provided by California Code of Civil Procedure 415.20(a) and (b).

**5.10.2.2** Parties receiving a Request shall have thirty (30) days following service of the Request to accept or reject alternative dispute resolution and, if not accepted within the thirty-day (30) period by a party, alternative dispute resolution shall be deemed rejected by that party. If the party upon whom the Request is served accepts alternative dispute resolution, the party initiating the Request shall complete the alternative dispute resolution within ninety days of receipt of the acceptance, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by both parties. A party's refusal to participate in alternative dispute resolution prior to the filing of a complaint in any action specified in this Section 5.10.2 may be considered by a court in determining the amount of attorney's fees and costs to be awarded to the prevailing party. Further, a filing party's failure to request alternative dispute resolution may result in the loss of important legal rights. The alternative dispute resolution procedure does not apply if the applicable time limitation for commencing the civil action would run within one-hundred twenty (120) days.

**5.10.2.3** Members of the Association shall annually be provided a summary of the provisions of this Section, specifically referencing California Civil Code Section 1354, or comparable superseding statute, and with a copy of said statute, as provided in the By-Laws.

## **5.11 Liability of Members of Board**

No member of the Board nor any member of a committee appointed by the Board, nor any individual Member of the Association acting as agent of the Board shall be personally liable to any Owner or to any other person for any error or omission of the Association, its representatives or employees, or of the Architectural Control Committee; Landscape Committee; Streets, Parking and Lighting Committee or any other Committee, provided that such Board member, committee member, or individual Member acting as agent has, upon the basis of such information as may be possessed by him, acted in good faith.

#### **5.12 Enforcement of Bonded Obligations**

The Board of Directors of the Association, with respect to any improvements, repairs or construction for the Association, may require a Faithful Performance bond from the contractor and shall have the power to make claim under such bond if the Board shall deem it necessary or appropriate.

**5.12.1 Special Meeting.** A special meeting of members for the purpose of voting to override a decision by the Board of Directors not to initiate action to enforce the obligations under the bond or on the failure of the Board of Directors to consider and vote on the question may be undertaken. Such meeting shall be required to be held not less than 10 days nor more than 60 days after receipt by the Board of Directors of a petition for such a meeting signed by members representing 5% of the total voting power of the Association.

**5.12.2 Membership Vote.** A vote of a majority of the voting power of the Association to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board of Directors shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

#### **5.13 Dissolution of Incorporated Association**

**5.13.1 Successor Association.** In the event that the Association as a corporate entity is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of the Association hereunder. The laws of the State of California and, to the extent not inconsistent shall govern the affairs of such unincorporated association therewith, by this Declaration and the Bylaws of the Association as if they were created for the purpose of governing the affairs of an unincorporated association.

**5.13.2 Title to Property.** Immediately prior to the dissolution of the Association as a corporate entity, the Association shall convey to an independent institutional corporate trustee all real property vested in it to hold such real property in trust for the benefit of the unincorporated association formed pursuant to Section 5.13.1 and for the benefit of the Owners pursuant to the terms of this Declaration and the Bylaws of the Association.

**5.13.3 Members' Rights.** Upon dissolution of the Association and the formation of an unincorporated association, each Owner in the Project shall become a Member of the unincorporated association and shall have an underlying beneficial interest in all of the property of the Association transferred to or for the account or benefit of said unincorporated association, such interest being in direct proportion to the number of Lots owned by such Member; provided, however, that there shall be no judicial partition of such property or any part thereof, nor shall any such Member or other person acquiring any interest in said property, or any part thereof, seek judicial partition, the right to do so being expressly waived.

### **ARTICLE 6. FUNDS AND ASSESSMENTS**

#### **6.1 Operating Fund**

The Association shall maintain an operating fund into which the Board shall deposit all funds paid to the Association as maintenance and operation assessments and special assessments. Said funds shall be held by the Association for the use and benefit of its individual Members and shall only be used for and applied to the common specific purposes of the Members as herein set forth.

#### **6.2 Maintenance and Operation Assessments**

**6.2.1 Regular Assessments.** Not less than sixty (60) days prior to the beginning of each fiscal year, the Board shall estimate the total charges to be paid out of the maintenance fund during such year (including a reasonable reserve for contingencies and replacement and less any expected surplus from the prior year). The Board shall allocate and assess said estimate of total charges to each Lot Owner equally by dividing said estimate by the number of Lots then contained in the Project and multiplying the resulting fraction by the number of Lots owned by each Lot Owner. All funds of the Association shall be budgeted, allocated, assessed and collected for current maintenance and operation of the Project, contingencies, deferred maintenance and replacement of capital improvements and shall be designated for those specific purposes.

Said funds shall then be used solely for the specific purpose for which they have been designated. Within sixty (60) days after the end of each fiscal year, the Lot Owners shall receive an accounting of assessment receipts and disbursements for the last ended fiscal year. If such accounting shows that a surplus of cash results in the Project's current maintenance and operation account, such surplus shall be placed into the Association's reserve accounts for future use.

**6.2.2 Increase in Regular Assessments.** Pursuant to California Civil Code Section 1366 (b), or comparable superseding statute, the annual Regular Assessment may be increased in any subsequent year by not more than twenty percent (20%) above the maximum assessment for the previous year, except for "emergency situations" as defined in Civil Code Section 1366(b) or comparable superceding statute. Any increase in the maximum amount of the Regular Assessment in excess of said twenty percent (20%) shall require a majority vote either at a meeting of Members or by written assent delivered to the Secretary of the Association. For purposes of this Section, the Quorum required for such meeting shall be at least fifty percent (50%) of the total voting power of the Association.

**6.2.3 Time and Manner Of Payment of Assessments.** Assessments shall be due and payable by the Owners to the Association during the fiscal year in equal quarterly installments, on or before the first day of each quarter, or in such other manner as the Board shall designate.

Pursuant to California Civil Code Section 1366 (d), Regular and Special Assessments are delinquent 15 days after they become due. If such assessments become delinquent, the Association may recover all of the following: (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees; (2) a late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater; (3) interest on the delinquent assessment at a rate not to exceed twelve percent (12%) per annum, or the maximum allowed by law, commencing 30 days after the assessment become due. The Board may, in its discretion, waive costs, late charges, or interest in any particular instance.

**6.3 Special Assessments.** If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or because of unexpected repair, replacement or reconstruction of the improvements in the Common Area or Lots or portions of Lots for which the Association has responsibility, 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, which amount shall be assessed to the Owners individually in the manner set forth in Section 6.2.1 above; provided, however, that, except in "emergency situations" pursuant to California Civil Code Section 1366 (b), or comparable superseding statute, in any fiscal year the Board may not levy such Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the majority vote either at a meeting of the Members or by written assent delivered to the Secretary of the Association. For purposes of this Section, the Quorum shall be at least fifty percent (50%) of the voting power of the Association.

**6.4 Reimbursement Assessment.** The Board shall levy an assessment against any Owner whose failure to comply with this Declaration or the Rules of the Association results in monies being expended by the Association from the operating fund in performing its functions under this Declaration. Such assessments shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended and shall be due and payable to the Association when levied.

### **6.5 Capital Improvement Assessment**

**6.5.1 Capital Improvement Assessments.** Upon approval of a majority of the Members of a proposed capital improvement and the estimated cost thereof pursuant to Section 5.8, such estimated total cost shall be levied and assessed equally to each Lot as a Capital Improvement Assessment.

**6.5.2 Special Assessment.** If at any time and from time to time a Capital Improvement Assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a Special Assessment pursuant to Section 6.3 above.

**6.5.3 Payment of Capital Improvement Assessment.** Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

### **6.6 Default in Payment of Assessments**

**6.6.1 Assessment as Personal Debt of Owner.** The assessments levied by the Board on behalf of the Association under this Article 6 shall constitute separate assessments. Each assessment levied under this

Article together with interest, costs and reasonable attorneys' fees, shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, and shall bind his heirs, devisees, personal representatives and assigns. Each assessment levied under this Article shall also be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. The Association shall have a separate lien and a separate lien is hereby created upon each Lot against which an assessment is made to secure the payment of any assessments under this Article. The priority of all such liens on each Lot shall be in inverse order, so that upon the foreclosure of the lien for any particular month's charge on any Lot, any such sale of such Lot pursuant to such foreclosure will be made subject to all liens securing the respective monthly charges on such Lot for succeeding months. Each such lien for any particular month's charge shall likewise secure interest thereon if the same is not paid when due, and shall likewise secure costs of suit and reasonable attorneys' fees to be fixed by the court in the event any action or suit is brought to collect such charge.

**6.6.2 Certificate of Indebtedness.** The Board shall execute and acknowledge a certificate stating the indebtedness secured by the lien upon any Lot and such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as to the amount of such indebtedness on the date of the certificate. The Board shall furnish a copy of such certificate to any owner upon request. A reasonable fee may be charged for the preparation of such statement.

**6.6.3 Liability of Successive Owners.** Purchasers of any Lot subject to this Declaration by acceptance of a deed or other conveyance therefore shall become personally obligated and agree to pay such charges that accrue after receiving title thereto, plus costs of suit and reasonable attorneys fees as above provided, and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges, costs of suit and attorneys' fees and for the enforcement of such liens. Such obligations shall run with the land so that the successive Owner or Owners of record of any Lot within the subject property shall in turn become liable to pay all such charges which shall become a lien thereon during the time they are the record Owners of such Lot within the Project. After a record Owner transfers title of record to any Lot owned by him, he shall not be liable for any charges thereafter to accrue against such Lot. He shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer. A contract seller of any Lot shall continue to be liable for all such charges until a conveyance by deed of such property is recorded in the office of the County Recorder of Alameda County.

**6.6.4 Priority of Assessment Liens.** The lien of each of the assessments provided for under this Article shall be subordinate to the lien of any first mortgage or mortgages or first deeds of trust now or hereafter placed upon the properties subject to assessment; provided, however, 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 in such mortgage or deed of trust. Such foreclosure sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment. The Board may, but is not required to, agree to subordinate the lien of said assessments to the interests of the Department of Veteran Affairs of the State of California under any Cal-Vet financing contract to the same extent as said liens are made subordinate to liens of mortgages under this provision.

**6.6.5 Assessment in Default.** Any assessment not paid within thirty (30) days after the due date shall be deemed to be in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Board on behalf of the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien securing any assessment under this Article. To begin said foreclosure proceeding, the Association or its agent shall mail a notice of the Assessment Lien to the delinquent owner and shall cause it to be recorded in the Office of the County Recorder of Alameda County. Said notice shall state the amount of the assessment, together with the interest, costs and reasonable attorneys' fees; a description of the Lot against which the same has been assessed and the name or names of the record owner or Owners thereof. Such notice of assessment may be recorded and an action brought to foreclose the same by the Association. Upon the declaration of an assessment lien and the recording of a notice thereof, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Lot Owner due and payable, which total sums may then be included in any suit, action or proceeding brought to collect said sum, including all costs, charges and attorneys' fees.

**6.6.6 Default Sale .** Each of the Owners does hereby appoint the Association or its designee as trustee to enforce and to foreclose such lien by private power of sale as provided in Division III, Part 4, Title XIV, Chapter 2, Article 1 of the Civil Code of the State of California, and does further grant to the Board on behalf of the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof, for lawful money of the United States, to the highest bidder to satisfy said lien. The Board, for the Association,

may purchase at said sale.

**6.6.7 Satisfaction and Release of Lien.** Upon payment of the delinquent assessment or the satisfaction thereof, the Board shall cause to be recorded in the same manner as the notice of assessment a further certificate stating the satisfaction and release of the lien thereof.

### **6.7 Association Funds**

The assessments collected by the Association shall be properly deposited into two accounts with a savings and loan association or bank selected by the Board. The assessments collected by the Association shall be held by the Association for and on behalf of each Lot Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Project and another portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Project, as specified in the annual budget. Said fund shall be deposited, as the Association shall separately maintain allocated, into the appropriate accounts and said accounts. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds shall be deemed automatically transferred to the successor transferee of such Owner. In the event that the Board retains a professional management service, the Board may delegate the authority to deposit or withdraw operating funds, but not reserve funds, to responsible representatives of the professional management agent so retained. Said professional management agent may additionally be authorized to establish a common trustee account for deposit of assessments as collected. Any funds deposited in such a common trustee account shall be allocated as previously specified herein.

### **6.8 Failure to Fix Maintenance Assessments**

The omission by the Board to fix the maintenance assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

### **6.9 Property Exempt from Assessments**

The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (1) all properties subject to any easement or other interests dedicated and accepted by the County or other local public authority and devoted to public use; and (2) all Common Area.

## **ARTICLE 7. ARCHITECTURAL CONTROL**

### **7.1 Organization**

There shall be an Architectural Control Committee consisting of at least three (3) Members of the Association. At least three committee members shall reside in three different Lots.

### **7.2 Removal, Resignations, and Vacancies**

The Board may at any time remove any Architectural Control Committee member. Any member of the Committee may at any time resign from the Committee upon written notice delivered to the Board. In the event that vacancies cause the total membership on the Committee to fall below the requisite three (3) members living in three (3) separate Lots, the Board shall fill such vacancies.

### **7.3 Duties**

It shall be the duty of the Architectural Control Committee to consider and advise the Board of Directors upon such proposals or plans submitted to it pursuant to the terms hereof; to monitor the Project for Owners' compliance with minimum standards of Residence maintenance; to monitor for conformity to approved plans any authorized work in progress; to report to the Board any unauthorized work in progress; to maintain for the reference of Owners a complete set of paint samples of those colors which are the sole colors authorized by the Board at any given time for use on the siding and trim of Residences; to maintain for the reference of Owners specifications, including color requirements, for roofing material authorized by the Board at any given time for use in re-roofing; to make recommendations to the Board as to the Architectural Rules which shall be adopted by the Board of Directors; to perform other duties delegated to it by the Association; and to carry out all other duties imposed upon it by this Declaration.

#### **7.4 Meetings**

The Architectural Control Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

#### **7.5 Architectural Rules**

With the advice and assistance of the Architectural Control Committee, the Board of Directors shall adopt and, when it deems advisable, amend, rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions hereof by setting forth standards concerning the placement, design, construction, alteration, restoration, repair and maintenance of all buildings and Residences in the Project. The Architectural Rules shall set forth procedures for the Architectural Control Committee to follow in reviewing plans and proposals from Owners requesting required prior written permission from the Board to modify the exterior and, occasionally in accordance with Section 3.2, the interior structure of a Residence. The Architectural Rules shall at all times include the requirement that a Residence may not be re-roofed or repainted without prior written permission from the Board. This requirement shall prevail even in the event that the Owner proposes to use the same type and color of roofing material as was previously applied or the same paint colors as were previously applied. The rules shall not be in derogation of the minimum standards required by this Declaration.

#### **7.6 Application for Approval of Improvements**

An Owner proposing to perform any work of any kind whatever which requires the prior written approval of the Board of Directors pursuant to Section 3.2 or any other section of this Declaration shall submit to the Architectural Control Committee and Board of Directors the nature of the proposed work in writing and furnish such information as the Committee may require.

#### **7.7 Basis for Approval of Improvements**

The Architectural Control Committee shall consider the submission and shall, within thirty (30) days of the receipt of the submission, advise the Board of Directors to grant the requested approval only if:

**7.7.1** The Owner shall have complied with the provisions of Section 7.6 above;

**7.7.2** The Architectural Control Committee shall find that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to such Committee;

**7.7.3** The members of the Architectural Control Committee determine that the proposed improvements would be consistent with the standards of Hiller Highlands Four Association and the purpose of this Declaration as to quality of workmanship and materials, as to harmony of exterior design with the existing structures and as to location with respect to topography and finished grade elevation; and

**7.7.4** The Owner has presented proof of compliance with all relevant building and/or planning codes, and/or ordinances.

#### **7.8 Approvals - Timing**

At such time as the Architectural Control Committee has considered the submission pursuant to Section 7.7 and, in any event, no more than thirty (30) days after receipt of the submission, the Committee shall make recommendations to the Board regarding the grant or denial of the request. Within thirty (30) days of receipt of the Architectural Control Committee's recommendation, and in no event more than sixty (60) days after the receipt of the submission by the Committee, the Board shall deny or grant the request.

#### **7.9 Form of Approval**

All approvals given under Section 7.8 shall be in writing; provided, however, that any request for approval, which has not been rejected within sixty (60) days from the date of receipt thereof by the Architectural Control Committee, shall be deemed approved.

#### **7.10 Proceeding with Work**

Upon receipt of approval from the Board of Directors pursuant to Section 7.9 above, the Owner shall, as soon as practicable, satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the

Owner shall fail to comply with this paragraph, any approval given pursuant to Section 7.9 above shall be deemed revoked unless the Board of Directors upon written request of the Owner made prior to the expiration of said one-year 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 Failure to Complete Work**

The Owner shall in any event complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so 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 Owner fails to comply with this paragraph, the Architectural Control Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 7.12 below as though the failure to complete the improvement was a noncompliance with approved plans.

### **7.12 Inspection of Work**

Inspection of work and correction of defects therein shall proceed as follows:

**7.12.1** Upon the completion of any 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, the Owner shall give written notice thereof to the Architectural Control Committee.

**7.12.2** Within twenty-one (21) days thereafter the Board, the Architectural Control Committee, or their duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Board or Architectural Control Committee finds that such 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, and may require the owner to remedy such non-compliance.

**7.12.3** If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Control Committee 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 non-compliance. The hearing date shall not be more than thirty (30) nor less than the Architectural Control Committee gives fifteen (15) days after notice of the non-compliance to the Board. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Control Committee, and, in the discretion of the Board, to any other interested party.

**7.12.4** At the hearing, the Owner, the Architectural Control Committee, and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a 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 ruling. If the Owner does not comply with the Board 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 non-complying improvement or remedy the non-compliance, or seek an injunction to require the Owner to remedy it, and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand, including reasonable attorneys' fees. If the Owner does not promptly repay such expenses to the Association, the Board shall levy a Reimbursement Assessment against such Owner pursuant to Section 6.4 hereof.

**7.12.5 Default Approval.** If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion by the Owner, the improvement shall be deemed to be in accordance with said approved plans.

### **7.13 Application for Preliminary Approval**

Any Owner proposing to construct improvements requiring the prior written approval of the Board may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed amendments in accordance with the Architectural Rules. The purpose of the preliminary approval procedure is to allow an owner proposing to make substantial improvements an opportunity to obtain guidance concerning the design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

**7.13.1** Within fifteen (15) days after proper application for preliminary approval, the Architectural Control Committee shall consider such request and make recommendations to the Board regarding acceptance or rejection of the request. The Board shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Board to act within forty-five (45) days after submission to the Committee shall constitute a preliminary approval. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval, as it may deem proper or desirable for the guidance of the applicant.

**7.13.2** Any preliminary approval granted by the Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and which is otherwise acceptable under the terms of this Declaration, shall be submitted to the Architectural Control Committee.

**7.13.3** In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

#### **7.14 Waiver**

The approval by the Board of Directors of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board of Directors 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.

#### **7.15 Estoppel Certificate**

Within thirty (30) days after written demand is delivered to the Board of Directors by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (a) all improvements made and work completed by said Owner comply with this Declaration, or (b) 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 purchaser from the Owner, or from anyone deriving any interest in said Lot through him, 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.

#### **7.16 Liability**

Neither the Architectural Control Committee nor the Board of Directors, nor 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: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 7.15, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him.

#### **7.17 City Requirements**

The application to and the review and approval by the Architectural Control Committee and the Board 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 shall lie solely with the Lot Owner.

#### **7.18 Mechanics' Liens**

In case there shall be filed a Notice of Mechanic's Lien against the Property for, or purporting to be for, labor or material alleged to have been furnished or delivered for any Owner at the Project or at his residence, the Owner shall forthwith cause such lien to be discharged by payment, bond or otherwise. If the Owner shall fail to cause such lien to be discharged, the Board may send written notice to said Owner specifying that unless said Owner discharges said lien within five (5) days from the date of said notice, the Board may cause said lien to be discharged by payment, bond or otherwise. Within said five-day period, the Owner shall be permitted to address a hearing of the Board regarding the validity of such lien or any offsets or defenses thereto. The Board shall determine whether such lien adversely and improperly affects and encumbers the

ownership interest of other Owners. Should the Board determine that said lien adversely and improperly affects the Ownership interest of other Owners and that no adequate protection of said interests has been provided, the Board may cause said lien to be discharged by payment, bond or otherwise. The Board shall have the right to collect from the Owner responsible for said lien, all amounts so paid together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

## **ARTICLE 8. CONDEMNATION**

### **8.1 Sale by Unanimous Consent or Taking**

If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Development, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees does not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

### **8.2 Distribution and Sale Proceeds of Condemnation Award**

**8.2.1 Total Sale or Taking.** A total sale or taking of the Development means a sale or taking that (1) renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (2) renders the Development as a whole uneconomical as determined by the vote or written consent of two-thirds (2/3) of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Lot bears to the fair market value of all Lots in the Development. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

**8.2.2 Partial Sale or Taking.** In the event of a partial sale or taking of the Development, meaning a sale that is not a total taking, as determined in Section 8.2.1 above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

**8.2.2.1** to the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

**8.2.2.2** to Owners and to their respective Mortgagees, as their interests may appear, of Lots in the Development whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 8.2.2.1 (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Subdivision Map and this Declaration to eliminate from the Development the Lots so sold or taken; then

**8.2.2.3** to any remaining Owner(s) and to his or her Mortgagees as their interests may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

**8.2.2.4** to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the court in the condemnation proceeding or by an appraiser.

### **8.3 Appraiser**

Wherever in this Article 8 reference is made to a determination of the value of fair market value of one or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a Member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply the SREA or other national organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the Condemnation Proceeds as an expense of the Association.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Amendment and Duration**

**9.1.1 Amendment.** The provisions hereof may be amended by an instrument in writing upon the vote of at least fifty-one percent (51%) of the voting power of the Association, which amendment shall be effective upon recordation in the office of the Recorder of Alameda County, but no such amendment shall adversely affect the rights of the holder of any deed of trust or mortgage recorded prior to the recordation of such amendment. Any amendment shall be binding upon every Owner and every Residence Lot whether the burdens thereon are increased or decreased thereby and whether the Owners of such Residence Lot consent thereto or not.

**9.1.2 Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

### **9.2 Enforcement and Nonwaiver**

**9.2.1 Right of Enforcement.** Except as otherwise provided herein, the Association or any Owner or Owners shall have the right to enforce any and all of the covenants, conditions and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any property in the Project.

**9.2.2 Arbitration.** If the Association and one or more Owners are unable to agree on the meaning or effect of any part of this Declaration, the dispute shall be conclusively settled by arbitration. The Association shall name one arbitrator; the Owner or Owners shall name one arbitrator. The two arbitrators so named shall name a third, and these three shall resolve the dispute.

**9.2.3 Violation and Nuisance.** Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or an Owner or Owners. However, any other provision of this Declaration notwithstanding, only the Board, or the Association or their duly authorized agents may enforce by self-help any covenant, condition or restriction herein set forth.

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

**9.2.5 Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.

**9.2.6 Nonwaiver.** The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of said Declaration.

### **9.3 Obligations of Owners**

No Owner may avoid the burdens or obligations imposed on him by this Declaration through non-use of any Common Area or the facilities located thereon or by abandonment of his Lot. Upon the conveyance, sale, assignment or other transfer of a residence to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of any Owner under this Declaration.

### **9.4 Construction and Severability; Singular and Plural; Titles**

**9.4.1 Interpretation.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners and occupants of said property. It is one of the purposes of this Declaration to comply with the requirements of ETU (Exception to Use Permit) 65-356. It is not the intent of this Declaration to

interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued or which may be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intent of this Declaration to interfere with or abrogate or annul easements, covenants, or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Residence Lot or upon the construction of buildings or structures or in connection with any other matters than are imposed or required by such provisions of law or ordinance or by such rules, regulations or permits or by such easements, covenants, and agreements, then in that case, the provisions of this Declaration shall control.

**9.4.2 Construction and Validity of Restrictions.** All of said restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, is invalid or for any reason becomes unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be thereby affected or impaired.

**9.4.3 Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

**9.4.4 Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the terms or provisions of said Declaration.

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