

**The following notice is pursuant to  
Subdivision (b) of Section 12956.1 of the  
California Government Code**

DocuSigned by:  
*Deborah Golden*  
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**Notice**

9/15/2021 | 11:09 AM PDT

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

Amended January 1, 2012

**RECORDING REQUESTED BY:**

**COSTA VISTA HOMEOWNERS ASSOCIATION**

**WHEN RECORDED MAIL TO:**

**COSTA VISTA HOMEOWNERS ASSOCIATION**

c/o Abend & Jacobson  
2300 Contra Costa Blvd., Ste. 285  
Pleasant Hill, California 94523

2000-00016389				
Recorded By:	4Q	RecFee	121.00	
COSTA VISTA HOMEOWN		SurMon		
		NoPCOR		
Official Records		IncFee		
County of Solano		DTTax		
Robert Blechschmidt		Cash	\$ 121.00	
Assessor/Recorder		OvrSht		
10:08	02-MAR-00	AR29	39	Pgs

DocuSigned by:

Space Above This Line For Recorder's Use Only

*Deborah Golden*

**SECOND AMENDED**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

9/15/2021 | 11:09 AM PDT

**OF**

**COSTA VISTA HOMEOWNERS ASSOCIATION**

This Second Amended Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by COSTA VISTA HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation (hereinafter referred to as the "Association"), in accordance with the Articles of Incorporation filed October 31, 1983 in the Office of the Secretary of State of the State of California.

**RECITALS**

WHEREAS, the Association is the successor in interest to Hill Top Developers, Inc. a California Corporation, which as Declarant executed that certain Declaration of Covenants, Conditions and Restrictions dated February 9, 1987, and recorded February 11, 1987, in Book No. 10068, Page 18141, the Office of the Solano County Recorder; and

WHEREAS, the Members of the Association constituting at least sixty-seven percent (67%) of all Members of the Association affirmed, approved and adopted an Amended Declaration of Covenants, Conditions and Restrictions which was recorded December 29, 1994 as Instrument No. 1994-00109738 at the Office of the Solano County Recorder and which repealed the Declaration of Covenants, Conditions and Restrictions dated February 9, 1987 and substituted in the place and stead thereof the Amended Declaration of Covenants, Conditions and Restrictions of Costa Vista Homeowners Association; and

WHEREAS, the Amended Declaration established certain limitations, restrictions, easements, covenants, conditions, liens and charges which run with the land, and are binding upon and inure to the benefit of, all parties and their successors-in-interest, having or acquiring any right, title, or interest in that certain parcel of real property located in the City of Benicia, County of Solano, State of California, and more particularly described as follows:

Lots 11 through 44, inclusive, as shown on the subdivision map filed for record on September 14, 1981, in Book 41, of Maps at Page 79 and Parcel A as shown on the partial map filed for record on September 29, 1983 in Book 25 of Parcel Maps at Page 16, both in the Official Records of the County of Solano, State of California.

WHEREAS, the Members of the Association, pursuant to Article VIII Section 8.4 of the said Amended Declaration, desire to amend, modify, and otherwise change the Amended Declaration;

NOW, THEREFORE, pursuant to Article VIII, Section 8.4 of the Amended Declaration, the Members of the Association do hereby declare that the aforesaid Amended Declaration of Covenants, Conditions and Restrictions recorded as Instrument No. 1994-00109738, in the Office of the County Recorder of Solano County, California, be, and hereby is repealed in its entirety and in the place and stead thereof is hereby substituted the within Second Amended Declaration of Covenants, Conditions and Restrictions of the Association; and

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

IT IS FURTHER HEREBY DECLARED that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as provided in *Section 1354 of the California Civil Code*, shall run with the said real property, and shall be binding upon and inure to the benefit of, each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns; and

IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Planned Development within the meaning of *Section 1351(k) of the California Civil Code*.

## ARTICLE I

### DEFINITIONS

1.1 **Articles:** The term "Articles" shall mean the Articles of Incorporation of the Association as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.2 **Association:** The term "Association" shall mean COSTA VISTA HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, and its successors and assigns.

1.3 **Board:** The term "Board" shall mean the board of directors of the Association.

1.4 **Bylaws:** The term "Bylaws" shall mean the Bylaws of the Association, as they shall be adopted by the Board and the Members and any duly-adopted Amendments thereof.

1.5 **Common Area:** The term "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners

1.6 **Declaration:** The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of the Association as said Declaration may, from time to time, be amended and recorded in the Office of the Recorder of Solano County, California.

1.7 **Development:** The term "Development" shall mean all the real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.8 **Governing Documents:** The term "Governing Documents" shall mean the Articles, Bylaws, Declaration and Rules of the Association.

1.9 **Guest:** The term "Guest" shall mean any person whose presence within the Development is approved by or at the request of an Owner (even if a non-Resident Owner) or a Resident.

1.10 **Lot:** The term "Lot" shall mean any plot of land shown upon any recorded subdivision map of the Development, with the exception of the Common Area, as to which the Owner thereof has fee simple title and the right of exclusive occupancy.

1.11 **Maintenance:** The term "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including

painting, caulking, cleaning and minor, non-structural upkeep and shall apply to all structures and improvements including but not limited to fencing and landscaping.

1.12 **Member:** The term "Member" shall mean every person or entity who holds membership in the Association, as provided in the Bylaws and the Declaration.

1.13 **Member in Good Standing:** The term "Member in Good Standing" shall mean an Owner of a lot for which all dues and assessments have been paid up to the current billing period and which Owner is in full compliance with the Association's Governing Documents and published rules.

1.14 **Mortgage:** The term "Mortgage" shall mean and include a deed of trust, as well as a mortgage, recorded with respect to any Lot within the Development.

1.15 **Mortgagee:** The term "Mortgagee" shall mean and include a beneficiary under or holder of a deed of trust, as well as a mortgagee.

1.16 **Owner:** The term "Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple or undivided fee interest in or to any Lot which is a part of the Development, including contract purchasers, but excluding contract sellers and those having such interest merely as security for the performance of an obligation.

1.17 **Repair:** The term "Repair" shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

1.18 **Replacement:** The term "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or exposure to the elements such that it is no longer useable or serviceable in its current condition.

1.19 **Residence:** The term "Residence" shall mean a structure used for human habitation located on a Lot.

1.20 **Resident:** The term "Resident" shall mean any 1) Owner, 2) such Owner's immediate family (within one generation), or 3) tenant of an Owner, living on that Owner's lot.

1.21 **Rules:** The term "Rules" shall mean the rules and regulations governing the use, occupancy and operation of the Development, or any part thereof, as adopted and published by the Board from time to time.

**1.22 Total Voting Power of the Association:** The term "Total Voting Power of the Association" refers to the maximum number of votes which could be cast for a single issue, assuming all votes were cast and no cumulative voting allowed. Assuming 65 lots in the Association, the Total Voting Power of the Association would be 65 votes.

## ARTICLE II

### PROPERTY RIGHTS

**2.1 Owners' Easements Of Enjoyment:** Every Owner shall have a 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, subject to the following provisions:

- A. The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and all facilities located thereon;
- B. The right of the Association to impose a monetary penalty against an Owner for any infraction of the Articles, Bylaws, Declaration or Rules, such penalty not to exceed \$250.00 per infraction; provided, however, that an Owner's rights shall not be suspended nor any monetary penalty imposed until after a hearing before the Board of the Association, as more fully set forth in the Bylaws;
- C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by the affirmative vote or written consent of more than seventy-five percent (75%) of the Total Voting Power of the Association agreeing to such dedication or transfer, has been recorded. The Board shall call a Special Meeting of the Members in accordance with the notice provisions of the Bylaws for the purpose of discussing and voting upon such dedication or transfer;
- D. The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage, pledge, deed in trust, or hypothecate said property;
- E. The right of the Association to charge reasonable admission or other fees for the use of any facilities situated upon the Common Area and

to limit the number of an Owner's guests or tenants who may use such facilities;

- F. The right of the Association to replace destroyed trees or other vegetation, and plant trees, shrubs, and ground cover upon any portion of the Association property; and the right to repair or replace any portion or all of the perimeter Lot fencing; and
- G. The right of the Association to convey exclusive easements in the Common Area to an Owner, if approved by sixty seven percent (67%) of the Members.

**2.2 Encroachment Easements:** Each Lot is hereby declared to have an easement over adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to foundations, exterior walls, windows, roof overhangs, and fences or walls which have been built in accordance with the original designs, plans, and specifications for the Development or due to minor engineering errors, minor errors in original construction, settlement or shifting of buildings, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall a valid easement for encroachment be created or exist in favor of any Owner if said encroachment occurred due to the intentional conduct of such Owner. In the event a structure is partially or totally destroyed and then repaired or rebuilt, minor encroachments over adjoining Lots and Common Area shall be permitted and there shall be valid easements for the maintenance of said encroachments for so long as they shall exist; provided, however, that any such easement of encroachment provided for in this section shall extend only to a distance of not more than three (3) feet as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point.

**2.3 Easements For Maintenance, Repair and Replacement:** The Association is hereby granted an easement over and upon each Lot and the dwellings located thereon for the purposes of inspecting for hazardous conditions, or accomplishing maintenance, repair and/or replacement upon the Common Area or a Lot, if required, in accordance with Article VII of this Declaration.

**2.4 Use of Common Area:** The Common Area shall be preserved substantially as originally constructed and shall be held, maintained and used to meet the common interests of the Members in Good Standing of the Association, their families, tenants and guests, as provided in the Declaration and the Rules. Nothing shall be stored upon, removed from, added to or altered in the Common Area except upon the prior written consent of the Board.

**2.5 Common Area Construction:** No person or entity, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall destroy or remove any tree, shrub, or other vegetation upon the Common Area unless approved by the Board.

**2.6 Delegation Of Use:** Any Owner may delegate, in accordance with the Bylaws, his or her right of use and enjoyment to the Common Area and facilities located thereon to members of his or her immediate family and to his or her tenants or contract purchasers who reside on the Lot. Delegation to tenants or contract purchases shall be in writing and a copy filed with the Association. Such Resident(s) shall comply with all provisions of the Governing Documents. A non-resident Owner may not use the Common Area facilities except as a Guest of a Resident.

**2.7 Avoiding Damage To Common Area:** Each Owner shall avoid causing any damage to the Common Area including but not limited to landscaped open space areas and shall be liable to the Association, and shall reimburse to the Association, all costs incurred by reason of any damage to the Common Area and any improvements thereon, including landscaping, which are caused by an Owner or an Owner's family, pets, tenants, guests, invitees, agents, or representatives.

**2.8 Damage Or Destruction Of Common Area:** In the event of any damage or destruction to the Common Area or any of the improvements or facilities located thereon, the Association shall undertake to repair and reconstruct any such damage or destruction, in so far as practical, in accordance with the original design or standard of construction of the damaged or destroyed Common Area, improvement or facility. The Association shall use all available insurance proceeds to accomplish such repair or reconstruction. In the event the insurance proceeds are insufficient to cover all of the costs of such repair or reconstruction, the Board shall pay the insurance proceeds to such 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, obtain a report evaluating the extent of reconstruction or repair of such damage or destruction which is reasonably possible solely using the aggregate sum of the total available insurance proceeds. As soon as possible, but not later than ninety (90) days after the occurrence of the damage or destruction, the Board shall present the report to the Members and shall notify all Mortgagees who have filed a request for notice with the Association of the findings of said report and call a special meeting of the Members. At such special meeting, the Members shall determine by a vote whether to use 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 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 made by the affirmative vote or written consent of at least fifty percent (50%) of the members present in person or by proxy in accordance with California Civil Code Section 1366. Any special assessment shall be levied equally as to each and every Lot and shall be a lien upon each and every Lot against which said special assessment is levied and enforced pursuant to the terms of this Declaration.

**2.9 Damage Or Destruction Of Residences:** If all or any portion of any Residence, Lot or any improvements thereon, including but not limited to gutters and downspouts, is damaged or destroyed by fire or other casualty, the Association shall repair or reconstruct the Residence, Lot or improvements in accordance with the plans and specifications for the Residence, Lot or improvements as originally constructed or installed, subject to any applicable building codes and regulations in force at the time of such repair or reconstruction. The Association shall not be responsible for repair or replacement of floor coverings, window coverings, fixtures, furniture or other personal property of owners, guests or tenants, nor for repair or replacement of any structural modifications to a Residence, Lot or improvement made after the original construction or installation. Funds for the repair or replacement of a Residence, Lot or improvements under this paragraph shall be provided by a special assessment pursuant to Paragraph 5.5 of this Declaration. The repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction, and shall be completed no later than one hundred eighty (180) days after the date of commencement, subject to delays which are beyond the control of the Association. Notwithstanding the foregoing, the Owner shall immediately take such steps as are reasonably required to protect other Lots and Common Area and improvements thereon, the occupants thereof and the general public from any hazardous conditions resulting from the damage or destruction.

**2.10 Allocation of Insurance Proceeds:** In the event any loss resulting from damage or destruction of any Residence, Lot or any improvement thereon is covered by insurance for which the Association is the named insured, the lot owner shall be responsible for the deductible. Thereafter, the Association shall use insurance benefits to repair or rebuild the Residence, Lot or improvement, with any excess insurance benefits to be deposited in the Association's reserve account. If the insurance benefits are insufficient to repair or replace the Residence, Lot or improvement, the Association shall be responsible for paying the difference between the available insurance benefits and the cost to repair or replace the Residence, Lot or improvement in accordance with Paragraph 2.9.

**2.11 Waiver Of Use:** No Owner may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot, or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Association property or by abandonment of his or her Lot.

**2.12 Party Fences and Walls:**

- A. Each fence which is built as part of the original construction within the Development and placed on a dividing line between Lots shall constitute a Party Fence, and each wall which is built as part of the original construction within the Development as a wall common to two Residences shall constitute a Party Wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Fences and Walls liability for property damage due to negligence or willful acts or omissions shall apply between adjacent lot Owners. The cost of reasonable repair and maintenance of a Party Fence or Wall shall be shared by the Owners of the adjacent Lots in equal proportions. If a Party Fence or Wall is destroyed or damaged by fire or other casualty, either Owner may restore it, and the other Lot Owner or Owners shall contribute to the cost thereof in accordance with their proportionate interests subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, any Owner who by his negligence or willful act causes a Party Fence or Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to Owner's successors in title;
- B. Any Party Fence which is built on the property line between a Lot and the Common Area will be maintained, restored, and replaced as necessary entirely by the Association, unless damaged or destroyed by the homeowner. Notwithstanding any other provision of this Section, any Owner who by his negligence or willful act causes such Party Fence to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to Owner's successors in title;
- C. Each Owner of a Lot shall own to the center of any Party Fence or Wall; and
- D. Each Owner of a Lot containing a Party Fence or Wall and the Lot upon which such Party Fence or Wall is located shall have a reciprocal non-exclusive easement over and across such portions of

adjoining Lot and the Common Area as is necessary to maintain such Party Fence or Wall.

**2.13 Partition:** There shall be no judicial subdivision or partition of the Common Area, nor shall any Owner seek any judicial partition or subdivision; provided, however, that if any Lot shall be owned by two or more Owners as tenants-in-common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such Owners, provided there shall not be a physical partition of such Lot.

**2.14 Termination of the Development:** The Association, acting through its Board, is granted power of attorney to sell the entire Association property for the benefit of all the Owners in order to provide a means of terminating the Development, should it become necessary or desirable to do so, this power shall (A) be binding on all Owners; (B) be exercisable only after prior approval of more than seventy-five percent (75%) of Owners; and (C) be exercisable only after recordation by the duly authorized officers of the Association of a certificate setting forth compliance with the foregoing conditions, which certificate shall be conclusive evidence thereof in favor of any person relying.

**2.15 Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, when all legal actions are complete, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Development, including membership in the Association, and the interests of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area effected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as the Owners are assessed, subject to the rights of mortgagees. If necessary, the remaining portion of the Development shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area, or part thereof.

**2.16 Utility Easements:** Each Lot is hereby declared to have an easement over adjoining Lots and the Common Area for access to utility services.

**2.17 Subdivision Map Easements:** The Common Area and all Lots are subject to the easements and rights of way shown on the Subdivision and Parcel Maps.

**2.18 Ownership Of Lots:** Title to each Lot in the Development shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same lot, such persons and/or entities shall constitute one Owner.

**2.19 Association Easements:** There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Governing Documents, including but not limited to the easements described in Section 2.3 above.

### ARTICLE III

#### PERMITTED USES AND RESTRICTIONS

**3.1 Use And Occupancy of Lots:** Each Residence shall be used solely for residential purposes; no continuing commercial activity, obnoxious or offensive trade, or other business activities shall be conducted or permitted upon any Lot; nor shall anything be done upon any Lot which may be or become an annoyance to the neighborhood. No other uses are allowed except as specifically permitted by local ordinance. Each Owner shall comply with all of the requirements of all governmental authorities and of all laws, ordinances, rules, regulations and Governing Documents applicable to his or her Lot and Residence. This Section 3.1 shall not prohibit home businesses providing such professional or administrative services as may be permitted by city ordinance, provided that there is no external evidence thereof and provided further that there is no unreasonable demand upon the parking facilities, common areas or common area facilities and utilities. The Board may, in its discretion, pass appropriate rules as to what shall constitute an "unreasonable demand" for purposes of this Section.

**3.2 Use of Common Area by Residents or Guests:** All use of the Common Area is subject to the Governing Documents. There shall be no use of the Common Area except by Residents or Guests. No one shall obstruct any part of the Common Area, and nothing shall be stored or kept in the Common Area without the prior consent of the Board. No alterations or additions to the Common Area shall be permitted without the approval of the Board. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be done or kept in the Common Area or any other part of the Development which might result in the cancellation of insurance on any Lot or any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any Governmental statute, ordinance, rule or regulation, or which would be in violation of the Governing Documents. No waste shall be committed or deposited in the Common Area.

**3.3 Rentals Of Residences:** An Owner shall be entitled to rent (month-to-month or periodic lease) his or her Residence if

- A. The Owner and tenant enter a written rental agreement or lease specifying that:

1. The tenant shall be subject to all provisions of the Governing Documents; and
  2. A failure to comply with any provision of the Governing Documents shall constitute a default under the agreement;
- B. The period of the any lease agreement is not less than thirty (30) days;
  - C. The Owner gives to the Board, prior to the commencement of the tenancy, written notice of the tenancy and a copy of the rental agreement (whether month-to-month or a lease) signed by the tenant and has otherwise complied with the terms of the Governing Documents; and
  - D. The Owner gives each tenant a copy of the Governing Documents.

No more than fifteen percent (15%) of the total number of Lots within the Development may be rented at any one time (including lease and month-to-month tenancies). If an Owner desires to rent his or her Lot, such Owner may do so, if no more than fifteen percent (15%) of the total number of Lots are, at that time, rented. If more than fifteen percent (15%) of the total number of Lots are rented, then an Owner who wishes to rent his or her Lot shall place his or her name on a list kept by the Board. When the number of rented Lots falls below fifteen percent (15%) of the total number of Lots, then the Owner whose name is at the top of the aforementioned list shall have the option, at that time, to rent his or her Lot. If the Owner whose name is at the top of the list does not elect to rent his or her lot within thirty (30) days of written notice of his or her option to do so, then the option will be given to the Owner whose name is next on the list; and the Owner whose name was first on the list must reapply to have his or her name added to the bottom of the list. An Owner on full-time military service shall be allowed to lease his or her Lot if he or she has been transferred by the Military without regard to the fifteen percent (15%) maximum set forth above; however, the Board must first approve such lease in writing after verifying the military transfer of the requesting Owner. Any occupancy of a Lot by a parent, child, or sibling of the Owner of that Lot, regardless of the existence of any rental agreement, shall not constitute a rental for purposes of this section. The Board may permit exceptions to the lease restrictions in this section in cases of extreme hardship. Any person seeking to except himself or herself from this section based on extreme hardship shall be entitled to appear before the Board and be heard.

**3.4 Architectural Committee Review:** No structure shall be erected, placed or altered, and no exterior of any existing structure or existing landscaping shall be removed, replaced or modified on any Lot until the Plans and Specifications for the same have been approved in writing by the architectural committee in accordance with the provisions of Article VI herein. No fence or wall shall be erected, placed or altered on any Lot, unless similarly approved.

**3.5 Structural Integrity:** Nothing shall be done to any structure or on any Lot or upon the Common Area which will impair the structural integrity of any building located within the Development.

**3.6 Temporary Shelters:** No trailer, motor home, recreational vehicle, basement, garage, barn or building other than the original Residences (including, but not limited to, any tent, shack, shelter or structure of a temporary character) shall be permitted to be used as a residence temporarily or permanently.

**3.7 Parking:** No mobile home, boat, camper, truck (except pickup trucks for personal transportation of one ton size or less), trailer, recreational vehicle of any kind, or commercial vehicle (such as vehicle with writing on side, ladders, tool boxes, racks and etc.), or inoperable vehicle of any type, shall be kept, stored, parked (other than temporarily [less than 12 hours]), maintained, constructed or repaired, on any property or street within the Development in such a manner as to be visible from any other Lot or from any street or the Common Area. No vehicle leaking any fluid may be parked in the driveways. No vehicle or any other object shall be covered while in a driveway. Garage doors shall remain closed, except when the garage is in active use. The provisions of this paragraph shall not apply to emergency repairs, defined as charging or replacing a battery or repairing or replacing a flat tire, involving a period of time not to exceed twelve (12) hours. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Owners and parking of vehicles belonging to or being used by Owners for loading or unloading purposes. Temporary parking does not include repeated or consecutive overnight parking. Only Guests may use the visitor parking spaces within the Development. The Board shall have the power to adopt and enforce further Parking Rules and Regulations concerning the parking of vehicles in the Common Area. The Owner of each Lot shall be responsible for the compliance by said Owner, his or her family members, tenants and guests, with such rules and the provisions of this section. The Board shall have the power to impose fines for violations of the provisions of this section or the Parking Rules. The Board shall have the power to cause the towing of vehicles which are parked in violation of this section or the Parking Rules, provided that such towing shall be subject to the provisions of applicable law.

**3.8 Hazards:** Nothing shall be done, placed or kept within the Development which will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule or regulation.

**3.9 Oil Drilling:** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**3.10 Pets:** No animals, birds, or fowl shall be kept or maintained on any part of the Development, except that dogs, cats, or other household pets may be kept upon any Lot, in reasonable numbers, for the pleasure and use of the occupants of said Lot but not for any commercial or breeding use or purpose; provided, however, that under no circumstances shall any pigeons, ducks, geese, venomous reptiles, or any animals which require a permit from the California Department of Fish and Game be permitted on any part of the Development. The Board shall have the right to adopt reasonable rules regarding the keeping of household pets within the Development, including a determination of what is a reasonable number of such household pets, and including provisions for the removal to a pound of any pet found outside the Owner's lot not being held on a leash or otherwise found to be in violation of provisions of this Declaration or the Rules. Excessively noisy pets, such as barking dogs, may be deemed a nuisance. Every Owner keeping a pet shall clean or repair any waste or destruction created by such pet. Unless approved by the Board, no structure for the care, housing or confinement of any permissible pet shall be maintained in a manner so that it is visible from neighboring property or streets. Persons accompanying pets outside the Lot in which they reside shall be required to carry items for use in picking up droppings. All droppings are to be removed immediately by the Owner or person in charge of the animal.

**3.11 Sound Devices:** No horns, whistles, bells, sirens or other sound devices, except security devices used exclusively to protect the security of a Lot and improvements located thereon, shall be placed or used on any Lot or improvements located thereon; provided, however, that the provisions herein shall not preclude the use of speakers for hi-fi players, stereos, radios or similar equipment, so long as the sound level of such equipment shall at all times be maintained at a reasonable level with respect to adjoining property owners.

**3.12 Advertising and Signs:** No Owner, tenant or other occupant of the Development shall post any advertisement, sign, flag, banner, or poster of any kind for public display, except that the following, if attractive and compatible with the design of the Development and in compliance with all applicable local ordinances, may be permitted, upon application to the Board:

- A. State and national flags of reasonable size;
- B. Campaign signs of customary and reasonable size;
- C. One sign of customary and reasonable dimensions and acceptable type, color, style and location, to advertise a Lot for sale or rent;
- D. Appropriate signs displayed by the Association to identify the Development;
- E. Signs, posters or notices approved by the Board or specified in the Governing Documents in locations designated by the Board; and

**F. Signs required by legal proceedings.**

**3.13 Holiday Displays:** Thanksgiving and Christmas holiday displays including lighting can be put up after November 15<sup>th</sup> and must be removed by January 15. Holiday displays including lighting other than for Thanksgiving and Christmas may be displayed one (1) week prior to any legal holiday and must be removed within one (1) week after the holiday. Such displays or lighting may not be attached to any roof or stucco surface.

**3.14 Nuisance:** No Lot or other part of the Development shall be used in such manner as to be injurious to the health of other residents of the Development, including but not limited to the illegal sale of controlled substances, or which is indecent or offensive to the senses, or an obstruction to the free use by other residents of their property or of the Common Area, or which interferes with the comfortable enjoyment by other residents of life or property.

**3.15 Garbage; Waste Plant Materials:** All garbage, rubbish, trash and refuse, shall be placed and kept in covered sanitary containers out of sight of any neighboring property or street shall be located only in places specifically designated for such purpose, except within twelve (12) hours of scheduled trash pickup. Containers shall be removed within twelve hours after neighborhood pickup, regardless of whether the container has been emptied. There shall be no maintenance or accumulated waste plant materials within the Development, except in areas designated therefor by the Board.

**3.16 Receiving Or Transmitting Devices:** Except as provided in this section and in section 3.18, no outside antennas, or transmitting or receiving devices of any type, shall be placed, connected, maintained, or permitted within the Development in such a manner as to be visible from any neighboring property or street, without the prior written approval of the Architectural Committee.

**3.17 Windmills, Turbines, Solar Panels:** No windmills or turbines generating electric power shall be placed, connected, maintained or permitted to remain on a Lot or structure within the Development in such a manner as to be visible from any neighboring property or street without approval of the Architectural Committee. The placement, connection or maintenance of solar panels on any structure within the Development must be approved by the Architectural Committee.

**3.18 Satellite Dishes:** No satellite dish or antenna used for the purpose of receiving video programming which is greater than 39 inches in diameter and which is visible from any adjoining property or street shall be installed or maintained upon any Lot without prior written approval of the architectural committee pursuant to Article VI of this Declaration. This Section shall not apply to satellite dishes installed prior to the adoption of this Declaration. The Board may adopt rules regarding installation of satellite dishes smaller than 39 inches in diameter which are consistent with state and federal law.



**3.19 Garages:** Garages shall be used for the purpose of parking automobiles and storing and use of an Owner's household goods. Garage doors shall remain closed, except when the garage is in active use.

**3.20 Sports Apparatus:** No basketball standards or fixed sports apparatus shall be installed, connected, maintained or permitted within a driveway or front yard area, or on any garage within the Development except portable facilities which shall be stored all night when not in use in a manner not visible from any neighboring property or street. Use of such portable facilities is prohibited between the hours of 10:00 p.m. and 9:00 a.m..

**3.21 Machinery and Equipment:** Without the approval of the Board, no machinery or equipment of any kind shall be stored, maintained, or operated upon a Lot unless (A) it is customary and necessary in connection with work approved by the Board, or (B) it cannot be felt, seen, heard, or smelled from streets or other Lots.

**3.22 Guests:** Each Owner shall be responsible for compliance with the provisions of the Governing Documents by his or her Guests. An Owner shall promptly pay any assessments, fines, and/or penalties imposed against such Owner for violations committed by his or her Guest.

## ARTICLE IV

### THE ASSOCIATION

**4.1 Management And Operation:** The Association shall manage and operate the Development in accordance with the provisions of the Governing Documents. The Association shall have all of the powers set forth in the Governing Documents, together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do, under the laws of the State of California, in operating the Development for the benefit of the Members, subject only to the limitation upon the exercise of such powers as are expressly set forth in this Amended Declaration, the Articles and Bylaws.

**4.2 Membership:** Every Owner of a Lot within the Development shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

**4.3 Association Rules:** The Board shall have the power and the authority to establish, promulgate, amend and repeal such Rules as the Board deems necessary for the management and operation of the Development. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area and the operation of facilities thereon,

architectural control, pets, signs, minimum standards for maintenance of Lots and the Common Area, parking regulations, and any other subject matter within the jurisdiction of the Association as provided in this Declaration. The Board shall adopt Rules pertaining to the use, access to and operation of the Common Area (including roofs) and all facilities thereon, and such Rules, whether or not they have been amended, shall be distributed annually to all Members.

**4.4 Committees:** The Board shall have the power to establish committees as it deems necessary and to appoint and remove members of any such committee, as provided in the Bylaws.

**4.5 Enforcement Of Governing Documents:** In the event of a breach or infraction of any provision of the Governing Documents by an Owner or by such Owner's family members, tenants, contract purchasers or guests, the Board, for and on behalf of all other Owners, shall enforce the obligation of such Owner and such Owner's family members, tenants, contract purchasers and guests to obey such provision, in any manner provided by law or equity. Failure to enforce any provision, at any time, shall not be deemed a waiver of the right to do so thereafter. In the event any action is taken or instituted by the Association, or if legal counsel is retained to enforce any such provision, the Association shall be entitled to recover any costs incurred, including attorneys' fees. In addition to any and all remedies allowed by law, the Board may, if deemed necessary levy fines. Levy of fines shall be effective only after notice and an opportunity for hearing as provided in the Bylaws. Prior to commencing litigation for an injunction or declaratory relief a Member or the Association must comply with the alternative dispute resolution procedure required by *California Civil Code section 1354* or any such successor statute. A summary of such law shall be distributed annually to the Members by the Association.

**4.6 Contracts:** The Association shall have the power to contract for goods and/or services for the Common Area and facilities thereon or for the Association, subject to any limitations as set forth in the Governing Documents.

**4.7 Manager:** The Board shall have the power and authority to employ the services of a Manager, Management Company, or other employee to manage and carry out the affairs of the Association, subject to the direction and control of the Board, 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 such Manager, Management Company or other employee, any of its power and authority; provided, however, that the Board may not delegate its responsibility or authority to levy monetary penalties, hold hearings, or impose discipline.

**4.8 Maintenance Personnel:** The Board may provide for or engage the services of third parties, including grounds keepers, painters, plumbers and other maintenance personnel, to provide for the maintenance, protection and preservation of the Common Area and Lots as may in the Board's judgment be required.

**4.9 Professional Advisors:** The Board shall have the power and authority to consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants and other professionals, and to pay for such professional services, in carrying out its authority and responsibility under the Articles, Bylaws, Declaration and law.

**4.10 Maintenance Obligation:** The Association shall maintain the Common Area, and shall keep it in good condition and repair, and shall further provide maintenance, repair and replacement for each Lot within the Development, as more particularly set forth in Article VII of this Declaration.

**4.11 Payment Of Expenses:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business.

**4.12 Assessments:** The Association shall fix, levy, collect and enforce assessments as set forth in Article V of the Declaration.

**4.13 Discharge Of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien, after notice and hearing as provided in the Bylaws.

**4.14 Insurance:** The Association shall have the authority and duty to obtain, and maintain in force, all policies of insurance described in Section 7.3 (B) of the Bylaws. Section 7.3(A) of the Bylaws shall govern the management of such policies.

**4.15 Annual Reports:** The Board of Directors shall cause to be prepared and distributed to the Members the following documents:

- A. A Pro Forma Operating Statement ("Budget"), a copy of which shall be distributed to all Owners at least forty-five (45) days but not more than sixty (60) days prior to the beginning of each fiscal year. The budget shall include the following information:
  - 1. An estimate of revenue and expenses on an accrual basis;
  - 2. The summary of the Association's reserves based upon the most recent reserve study which shall be printed in bold-type and include all of the following:
    - a. The current estimated replacement cost, estimated remaining life and estimated useful life of each major component;

- b. As of the end of the fiscal year for which the study is prepared:
    - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components, and
    - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.
  - c. The percentage that reserves are funded [i.e., current amount accumulated under sub-paragraph (2)] divided by the current estimate of reserves necessary per paragraph 1);
  - 3. A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor; and
  - 4. A general statement addressing the procedures used for the calculation and establishment of the reserves.
- B. An Annual Review of the Association's Financial Statements , to be distributed to all Owners within one hundred twenty (120) days after the close of each fiscal year, consisting of the following:
- 1. A Balance Sheet as of the end of the fiscal year;
  - 2. An Operating (Income) Statement for the fiscal year;
  - 3. A Statement of changes in financial position for the fiscal year; and
  - 4. Any information required to be reported under *Section 8322 of the California Corporations Code.*

The Review of the Annual Financial Statement shall be prepared by a licensee of the California State Board of Accountancy in accordance with generally accepted accounting principles for any fiscal year in which the gross income to the Association exceeds

Seventy Five Thousand Dollars (\$75,000.00). If the Review is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Association that the Review was prepared without audit from the books and records of the Association.

- C. In lieu of the distribution of the Pro Forma Operating Statement, the Board may elect to distribute a summary of the Pro Forma Statement to all the Members with a written notice in 10 point boldfaced type that the Pro Forma Operating Statement is available at the Association Office or at another place within the Development and that upon request the Association will mail at its expense with five days, a copy of the Pro Forma Statement to the Members so requesting;
- D. A written statement of the policies and practices of the Association in enforcing lien rights and other legal remedies for default in the payment of assessments, which shall be delivered to the membership within sixty (60) days prior to the beginning of each fiscal year;
- E. A written statement of the Members' right to copies of the minutes of Board meetings and how and where those minutes may be obtained, which shall be distributed with the pro forma budget;
- F. A summary of the Association's property, general liability, earthquake and flood insurance policies which shall be delivered to the membership within sixty (60) days prior to the beginning of each fiscal year and shall include all of the following information about each policy:
  - 1. The name of the insurer;
  - 2. The type of insurance;
  - 3. The policy limits of the insurance; and
  - 4. The amount of deductibles, if any.

The summary shall contain the language required by *Civil Code Section 1365* or successor statutes. The Association shall, as soon as reasonably practicable, notify the Members by first class mail if any of the insurance policies described in the summary has lapsed, been canceled, and is not

Immediately restored or replaced, if there is a significant change in coverage or deductibles or if the Association receives a notice of nonrenewal of such policy and no equivalent coverage will be in place by the time the existing policy will lapse; and

- G A summary of the provisions of *Civil Code Section 1354*, which concerns alternative dispute resolution procedures.

**4.16 Reserve Study:** At least once every three years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore or maintain as part of a study of the reserve account requirements of the Association if the current replacement value of the major components is equal to or greater than one half the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments. The study shall include:

- A. Identification of major components which the Association is obligated to repair, replace, restore or maintain with remaining useful life of less than 30 years;
- B. Identification of the probable remaining useful life of the components identified in subparagraph (A) as of the date of the study;
- C. An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in subparagraph (A) during and at the end of its useful life; and
- D. An estimate of the total annual contribution necessary after subtracting total reserve funds available as of the date of the study.

**4.17 Easements:** The Association shall have the power to grant and convey easements, licenses for use, and rights-of-way in, on, over or under the Common Area, or any portion thereof; provided, however, that such easements, licenses and rights-of-way shall not be inconsistent with the purposes of the Association and shall not unreasonably interfere with the rights of the Members under the Governing Documents.

**4.18 Dedication:** The Board shall have the power and authority to transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by the affirmative vote or written consent of more than fifty (50%) of the Total Voting Power of the Association agreeing

to such education or transfer, has been recorded. The Board shall call a Special Meeting of the Members in accordance with the noticed provisions of the Bylaws for the purpose of discussing and voting upon such dedication or transfer.

**4.19 Capital Improvements:** The Board shall have the power and authority to provide for the construction, installation or acquisition of capital improvements upon the Common Area; provided, however, that the Board shall not incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the affirmative vote or written consent of more than fifty percent (50%) of the Total Voting Power of the Association.

**4.20 Good Faith Actions And Indemnification:** The members of the Board and any committee appointed by the Board shall not be held liable for any error or omission or any action taken, provided that he or she has acted in good faith. The Association shall indemnify and hold harmless, to the maximum extent permitted by California law, each person who shall at any time serve as director or officer of the Association or as a member of any committee appointed by the Board, from and against any and all claims and liabilities to which such person shall become subject by reason of his or her being a director or officer of the Association or a member of a committee or by reason of any action alleged to have been taken or omitted by him or her in such capacity, and the Association shall reimburse each such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided, however, that no such person shall be indemnified with respect to, or reimbursed for any expense incurred in connection with, any claim or liability arising out of actions or omissions not taken in good faith.

**4.21 Reserve Funds:** The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing how and when the funds will be repaid to the reserve account. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except the Board may, upon making a finding supported by documentation that a delay would be in the best interest of the Association, temporarily delay the restoration until the time the Board deems reasonably necessary. The Board shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section, which levy is subject to any limitations placed on the Board pursuant to Article V of this Declaration. When the decision is made to use reserve funds or to temporarily transfer reserve funds to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members.

The Members shall also be notified of the availability of an accounting of such costs, which shall be prepared on a quarterly basis.

**4.22 Inspection Of Documents:** Upon written request, any Owner shall be entitled to inspect within 72 hours the books, records and financial statements of the Association, the Governing Documents, and any amendments thereto during normal business hours or under other reasonable circumstances.

**4.23 Mortgage Protection:** A breach of any of the conditions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Lot in the Development provided that the conditions contained in this Declaration shall be binding and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

## ARTICLE V

### FUNDS AND ASSESSMENTS

**5.1 Covenant Of Owner:** Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to covenant and agree to pay to the Association, (A) annual (regular) assessments, (B) special assessments, and (C) reimbursement assessments levied by the Association as hereinafter provided, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, and shall thereby be deemed to vest in the Association the right and power to initiate all actions and procedures for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each assessment levied by the Association under this Article, together with interest, late charges, costs of suit and/or collection, 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 or her heirs, devisees, personal representatives, successors and assigns. Such obligations and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner of any Lot within the Development shall, in turn, become liable to pay all such charges assessed during the time he or she is Owner of such Lot. After an Owner transfers, of record, any Lot he or she owns, he or she shall not be liable for any assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with applicable charges accruing until time of collection. A contract seller of any Lot shall continue to be liable for all assessments and charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of the County in which the Development is located. No Owner may waive or otherwise escape personal liability for assessment or release the Lot owned by him from the liens and charges by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Development.



**5.2 Creation Of Lien:** Each assessment levied by the Association pursuant to this Article, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, shall be a charge upon 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 levied to secure the payment of any such assessments and charges levied under this Article. Foreclosure shall be deemed to foreclose on the latest month's charge first and said foreclosure shall not extinguish liens for prior month's charges, until foreclosed upon by the Association.

**5.3 Purpose Of Annual (Regular) Assessments:** The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, property values and welfare of the residents in the Development and for the improvement, maintenance and restoration of the Common Area. Said annual (regular) assessments shall include, without limitation, and the Association shall acquire and pay for out of the funds derived from said annual assessments, the following, which shall be assessed equally to the Lot Owners:

- A. Water, sewer, garbage, electrical, lighting, telephone, and gas and other necessary utility service for the Common Area;
- B. Maintenance and repair of storm drains, sanitary sewers, and private driveways lying within the Common Area;
- C. The cost of painting, maintenance, repair, replacement and all landscaping of the Common Area, and the structures and improvements thereon, and such furnishings and equipment for the Common Area as the Association shall deem necessary and proper, including without limitation, all equipment, furnishings, and personnel as may be necessary or proper for the use and maintenance of the Common Area, and the facilities thereon, provided that the Association shall have the exclusive right and duty to acquire or hire the same;
- D. The cost of replacement of roofs and painting of Residences;
- E. The cost of insurance premiums, exclusive of deductibles, for any insurance policies obtained by the Association as provided in this Declaration;
- F. The cost for periodic cleaning of skylights, second story windows over garages, gutters and downspouts of Residences; and
- G. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or

assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Area, or for the enforcement of the Governing Documents.

**5.4 Annual (Regular) Assessments:**

- A. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year (including a reasonable reserve for contingencies and replacement) to manage, operate, and maintain the Development and to perform all of its duties in accordance with this Declaration. The Board shall allocate and assess the amount of said estimated funds equally among the Lots, by dividing the said estimate by the number of Lots within the Development. All sums levied by the Association as annual assessments shall be budgeted, allocated, assessed, and collected for current maintenance, operation, and management of the Development, contingencies, deferred maintenance, and replacement of capital improvements and shall be designated for those specific purposes, and the specific purposes for which they have been designated except as otherwise provided in this Declaration;
- B. Within one hundred twenty (120) days after the end of each fiscal year, the Board shall deliver or mail to all Owners 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 Association's current maintenance and operation account, such surplus shall be applied to reserves or the next year's operating expenses unless some other disposition of such surplus funds is determined by the vote of more than fifty percent (50%) of the Total Voting Power of the Association;
- C. The Board shall not impose an annual (regular) assessment, for any fiscal year, which is more than twenty percent (20%) greater than the annual assessment for the preceding fiscal year, without the approval of a majority of those Owners present in person and proxy, at a duly called and noticed meeting, a quorum of at least a majority of all Owners having first been established, or by written ballot of a majority of all Owners without a meeting.

- D. Notwithstanding the foregoing, however, the Board shall have the power to impose an increase in the annual (regular) assessment in an amount necessary to meet an emergency situation, defined as any one or more of the following:
1. An extraordinary expense required by an order of a court;
  2. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where a threat to personal safety on the property is discovered; and
  3. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where such extraordinary expense could not have been reasonably foreseen by the Board in preparing and distributing the annual budget for the current fiscal year; provided, that prior to the imposition or collection of an assessment increase to cover such extraordinary expense, the Board shall pass a resolution containing written findings as to the necessity of such extraordinary expense and as to why such extraordinary expense was not or could not have been reasonably foreseen in the budgeting process, and provided, further, that such resolution shall be distributed to the Members with the notice of the assessment increase; and
- E. Annual assessments shall be paid in equal monthly installments during the fiscal year and each installment shall be due and payable on the first day of each month.

**5.5 Special Assessments:** If at any time during any fiscal year the annual (regular) assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement or reconstruction of improvements located on the Common Area, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a special assessment in the amount of such actual or estimated inadequacy or cost, which amount shall be allocated and assessed equally among the Lots; provided, however, that 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 approval of a majority of those Owners present in person and proxy at a duly called and noticed meeting, a quorum of at least a majority of all Owners having first been established, or by written ballot of a majority of all Owners without a meeting; and provided, further, that notwithstanding the foregoing limitation, the Board shall have the power to impose

a special assessment in an amount necessary to meet an emergency situation, defined as any one or more of the following:

- A. An extraordinary expense required by an order of a court;
- B. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where a threat to personal safety on the property is discovered; and
- C. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where such extraordinary expense could not have been reasonably foreseen by the Board in preparing and distributing the annual budget for the current fiscal year; provided, that prior to the imposition or collection of a special assessment to cover such extraordinary expense, the Board shall pass a resolution containing written findings as to the necessity of such extraordinary expense and as to why such extraordinary expense was not or could not have been reasonably foreseen in the budgeting process, and provided, further, that such resolution shall be distributed to the Members with the notice of the special assessment.

**5.6 Increased Assessments:** The Association shall provide notice by first-class mail to all Members of any increase in the regular or special assessments of the Association, not less than thirty (30) and no more than sixty (60) days prior to the increased assessment becoming due.

**5.7 Reimbursement Assessments:** The Board shall levy a reimbursement assessment against any Owner and the Lot owned by such Owner when the failure of such Owner, or such Owner's family, tenants, contract purchasers, Guests, invitees, agents, or representatives, to comply with any provision of the Governing Documents has resulted in: (A) the expenditure of Association funds to enforce any such provision or to bring such Owner or Lot into compliance with any of such provisions; or (B) in the imposition of fines or penalties against such Owner of Lot. Such assessment shall be for the purpose of reimbursing the Association for the costs incurred by it and collecting amounts owed, and shall be limited to the amount so expended and/or owed, including any costs and attorneys' fees, and shall be immediately due and payable to the Association when levied and after the hearing process is complete.

**5.8 Failure To Fix Assessments:** The failure or omission by the Board to fix or levy any annual assessment provided for by the terms of this Declaration before the expiration of any year, for that year or the next year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation

to pay 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 levied.

**5.9 Offsets:** All assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever.

**5.10 Delinquent Assessments:** Any monthly installment of an annual assessment, a special assessment or a reimbursement assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, plus costs of collection, including attorneys' fees. The Board, on behalf of the Association, may enforce the payment of any delinquent assessment by bringing an action at law against the Owner personally obligated to pay the same, or by foreclosing the Lien against the Property. No lawsuit shall be initiated to foreclose the Lien securing any assessment levied under this Article until at least thirty (30) days following the mailing of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association, to the Owner or Owners of the subject Lot, and the recording of such Notice in the Office of the Recorder of the County in which the Development is located. Said Notice of Delinquent Assessment shall state the amount of the assessment, together with accrued interest, late charges, costs, reasonable attorneys' fees, and other applicable charges; a description of the Lot against which the same has been assessed; the name or names and mailing addresses of the Record Owner or Owners thereof; and the name and address of the Trustee authorized by the Association to enforce the Lien by sale. Upon the levying of an assessment and the recording of the Notice referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all costs, charges, and attorneys' fees.

**5.11 Power Of Sale:** Each Owner does hereby appoint the Association as Trustee to enforce and to foreclose any Lien established pursuant to the terms of this Declaration by private power of sale, as provided in *Division 3, Part 4, Title 14, Chapter 2, Article 1 of the Civil Code of the State of California*, and does hereby further grant to the Board of Directors, 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, as Trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. The Board may commence any procedure for the collection of delinquent assessments upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. The remedies provided in this Declaration for collection of delinquent assessments shall be cumulative and not alternative or exclusive.

**5.12 Certificate Of Satisfaction:** Upon payment in full of a delinquent assessment, including any charges, or the satisfaction thereof, the Board shall cause to be

recorded, in the same manner as the Notice of Delinquent Assessment, a further Certificate stating the satisfaction thereof and the release of the Lien. A failure of the Board to record such Certificate and Release of Lien within thirty (30) days after written demand by the Owner shall entitle the Owner to recover a penalty of One Hundred Dollars (\$100) from the Association, plus actual damages.

**5.13 Subordination:** 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 any Lot subject to assessment in accordance with the terms of this Declaration; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such Lot pursuant to a Decree of Foreclosure of any such mortgage or deed of trust, or pursuant to a Power of Sale contained in any such mortgage or deed of trust. Such foreclosure sale shall not relieve such property from liability for any assessments and charges thereafter becoming due, nor from the Lien of any such subsequent assessment. The Board may agree to further subordinate the Lien of said assessments to the interests of the Departments of Veterans' 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 and deeds of trust under this provision. Contract purchasers on any VA or Cal Vet contract shall be deemed Owners for all purposes of this Declaration.

**5.14 Association Funds:** The assessments collected by the Association shall be properly deposited into one or more separate accounts with a bank or other federally insured financial institution, or United States Government Treasury Bills, or other fiscally prudent accounts, as determined by the Board. The assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used solely for the operation, care, maintenance and restoration of the Common Area and enforcement of the Governing Documents as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Common Area and another portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Common Area, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall be deemed automatically transferred to the successor-transferee of such Owner.

**5.15 Property Exempt From Assessments:** The following property subject to this Declaration shall be exempt from the assessments, charges and Liens created herein:

- A. All property dedicated to and accepted by the City, County or other local public authority and devoted to public use;
- B. All Common Area; and
- C. Lots owned by the Association.

**5.16 Statement Of Assessment Lien:** Within ten (10) days of a request from an Owner liable for assessments, the Association shall furnish to that Owner a written statement signed by an officer or authorized agent of the Association stating the amount of any assessment and any additional charges (including but not limited to attorneys fees and costs secured by the lien upon his or her Lot. A charge, not to exceed the reasonable costs of preparation and reproduction of the certificate may be levied by the Board for the issuance of such certificate.

## ARTICLE VI

### ARCHITECTURAL REVIEW

**6.1 Architectural Review:** The Board, or, if established by the Board, an architectural committee (for purposes of this Article: "Committee") consisting of a minimum of three (3) and maximum of five (5) Owners, shall perform architectural review of the Development's structures pursuant to this Article. No more than one Owner per Lot may serve on the Committee at the same time. No Committee member shall receive compensation for any service rendered hereunder. However, the Committee and its members shall be entitled to reimbursement for reasonable out of pocket expenses incurred by them in the performance of any Committee function. The terms of office shall be designated by the Board.

**6.2 Duties:** It shall be the duty of the Board or Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to recommend Architectural Rules, to carry out property maintenance inspections to perform other duties delegated to it by the Association or the Board and to carry out all other duties imposed upon it by this Declaration.

**6.3 Meetings:** The Board or Committee shall meet from time-to-time as necessary to properly perform its architectural duties hereunder. The vote or written consent of a majority of its members shall constitute an act by the Board or Committee unless the unanimous decision of its members is otherwise required by the Declaration. The Board or Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise.

**6.4 Rules:** The Board shall adopt and amend rules and regulations to be known as "Architectural Rules." Said Architectural Rules shall concern exterior improvements, or modifications on Lots to include pre-approved exterior improvements or modifications. Any exterior improvement or modification to any lot or residence not pre-approved by the Architectural Rules shall require prior written approval by the Board or Committee. Said Architectural Rules shall set forth the standards and procedures for review, approval and rejection of applications, guidelines for architectural design, placement of buildings and other structures upon Lots and shall set forth the color schemes, exterior finishes, materials and similar features which are pre-approved for use in the Development; provided, however, that said Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The

Board or Committee annually shall distribute a copy of the most current Architectural Rules to each Member of the Association.

**6.5 Application For Approval:** Applications for approval of exterior improvement or modification to any Lot or Residence shall be submitted in writing by the Owner to the Association Manager, including

- A. A description of the nature of the proposed work;
- B. Two (2) sets of the plans and specifications showing the nature, kind, shape, color, size, height, materials and location of the improvement or modification; and
- C. Other information as requested by the Board or Committee.

If an application is delivered in person, the date of receipt shall be clearly marked thereon and such date shall be deemed to be the submission date. If an application is mailed, the date of postmark shall be deemed to be the submission date.

**6.6 Standards for Decision:** The Board or Committee may approve the application only if it finds that

- A. The plans and specifications conform to the Governing Documents in effect at the time that the proposal was submitted, and
- B. The proposed exterior improvement or modification will be consistent with the standards of the Development and the provisions of the Governing Documents as to quality of workmanship and materials, harmony of exterior design, visibility with respect to existing structures and environment and the location with respect to topography and finished grade elevation.

**6.7 Issuance Of Decision:** The Board or Committee's decision concerning an Application shall be issued in writing ("Notice of Decision") and shall be delivered to the Owner, either personally or by first-class mail, postage prepaid. In the Notice of Decision, the Board or Committee may approve the Application, approve it with conditions (specifying the items with which the Owners must comply), or reject the Application (stating the reasons).

**6.8 Application Deemed Approved:** An Application which has not been rejected or conditionally approved within forty-five (45) days after the date of submission thereof to the Board or Committee shall be deemed fully approved. For these purposes, the "date of submission" is deemed to be the date when all documents which are required under Section 6.5 above have been submitted to the Board or Committee. If the Board or Committee requests



additional information or documentation from an Owner to assist it in making a final decision on the Application, the "date of submission" shall be the date when the additional information or documentation is delivered to the Board or Committee by the Owner.

**6.9 Appeal:** If an Application is rejected or conditionally approved by the Committee, the applicant Owner may appeal to the Board within thirty (30) days after the date of the Notice of Decision. For these purposes, the "date of the Notice of Decision" is deemed to be, in the case of mailing, the date of postmark on said Notice of Decision, or, in the case of personal delivery, the date of delivery. Such appeal shall be submitted in writing to the mailing address of the Association. The matter may be heard at the next regularly scheduled meeting of the Board but in no event more than sixty (60) days after submission of the appeal. Notice of the hearing shall be given to the Owner at least ten (10) days in advance, even if mailed, and, in the discretion of the Board, to any other interested party. At the hearing, the Owner, and in the Board's discretion, any other interested person may present information relevant to the Application. Within ten (10) days after the hearing, the Board shall issue and deliver to Owner, either personally or by first-class mail, postage prepaid, a written ruling approving, approving with conditions or rejecting the Application. The Board's ruling shall be final. The Board shall comply with provisions set forth in section 6.7 above and all Architectural Rules.

**6.10 Non-Waiver:** Any approval by the Board or Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board or Committee 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.

**6.11 Commencing And Completing Work:** If an application is approved, the work for the exterior improvement or modification must commence within one (1) year from the date of the approval and must be completed within six (6) months of commencement. If the Owner fails to timely commence or complete the exterior improvement or modification, the approval shall be deemed revoked, unless the Owner applies for and received an extension of time for commencement or completion from the Board. Requests for extensions shall be in writing. The Board may not grant an extension unless it finds that there has been no change in the plans upon which the original approval was based. No extension shall exceed six (6) months.

**6.12 Determination Of Compliance:** Upon the completion of any exterior improvement or modification performed by an Owner for which approval was granted, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was granted, the Board may proceed upon its own initiative; likewise, upon the commencement of any exterior improvement or modification by an Owner for which approval was not granted, the Board may proceed upon its own initiative.

Within sixty (60) days after completion of approved work, the Board or Committee shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board or Committee finds that the work was not performed in substantial compliance with the approval granted, the Board or Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance within sixty (60) days (the "compliance period").

For any improvement or modification performed by an Owner for which no approval was granted by the Board or Committee, no inspection and/or determination shall be required by the Board or Committee to declare the work as non-compliant. The Board or Committee shall notify the Owner in writing of the non-compliance and require the Owner to remedy the non-compliance within a thirty (30) day compliance period.

**6.13 Remedying Non-Compliance:** If the Owner fails to remedy any non-compliance in accordance with the provisions of a notice of non-compliance, then within thirty (30) days after expiration of the compliance period, the Board or Committee shall provide an opportunity for Owner to be heard. If the Board or Committee finds that there is no valid reason for the continuing non-compliance at the hearing, the Board or Committee shall determine the estimated costs of remedying the non-compliance. The Board or Committee shall then notify the owner: (A) to remedy the non-compliance within thirty (30) days from the date of the Board's or Committee's notice; and (B) that if the Owner does not remedy the non-compliance the Board may remedy the non-compliance with the costs of such action being assessed against the Owner as a reimbursement assessment.

**6.14 Compliance Certificate:** Within thirty (30) days after written demand is delivered to the Board or Committee by any Owner and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board or Committee shall record a certificate executed by any two (2) directors certifying that either the completed exterior improvement or modification complies with the Governing Documents or does not comply. If it does not comply, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association and all Owners and such persons deriving any interest through them.

**6.15 Liability:** If the Board or Committee members have acted in good faith on the basis of such information possessed by them, they shall not be liable to the Association or any Owner, for any damage, loss or prejudice suffered or claimed due to the approval or disapproval of any plans, the construction or performance of any work, the development of any property within the Development, or the execution and filing of any estoppel certificate.

## ARTICLE VII

### MAINTENANCE, REPAIR, AND REPLACEMENT

**7.1 Association Responsibility:** The Association shall have the obligation to maintain, repair and replace the Common Area and its improvements; provided, however, that the expense of any maintenance, repair or replacement of the Common Area and its improvements which is caused by the intentional or negligent act or omission of an Owner, Resident, Guest or pet shall be paid by such Owner, and the Board may charge the full amount of any such cost to such Owner as a reimbursement assessment as provided in Article V of this Declaration. The Association shall paint the exterior surfaces of Residences; shall maintain, repair and replace roofs; and shall, at least once each year, clean skylights, second story windows over garages, gutters and downspouts of Residences. The Association shall maintain, repair and replace the fences separating the Lot and Common Area.

**7.2 Owner Responsibility:** Each Owner shall have the obligation at his or her expense to maintain in good condition and, in the case of damage or destruction, repair and/or replace his or her Lot and all improvements thereon (including but not limited to exterior garage lighting and fencing) except for any responsibilities accepted by the Association under Section 7.1 above. Landscaped areas within any Lot shall be maintained continuously by the Owner in a manner to maintain established slope ratios, prevent erosion or sliding problems, and to facilitate the orderly discharge of water through natural drainage systems and patterns. Each Owner shall repair, replace and maintain the skylights, second story windows over garages, gutters and downspouts of his or her Residence, but the Association shall clean these items at least once each calendar year. A licensed contractor must do any work involving roof access or changes that may affect the structural integrity of the roofs or building.

No structure, planting or other materials shall be placed or permitted to remain, or other activities undertaken on any slope area, or any other area, within a Lot which might damage or interfere with natural or established drainage systems or patterns. Any area drainage and other drainage facilities and systems located on any Lot shall be maintained by the Owner in a neat, orderly and safe condition in such a manner as to facilitate the orderly discharge of water. As used herein, the term "Drainage System and Pattern" includes, but is not limited to, underground drain pipes and patterns of drainage over the development from and to adjoining properties and improvements. The Owner of each Lot shall have the right to use the natural drainage system and pattern; provided that such rights of drainage shall not include the right to discharge noxious or offensive matter.

Water from any Lot, and the improvements thereon, may drain or flow into adjacent streets. All slopes and terraces on any Lot shall be maintained as provided herein, so as to prevent any erosion thereof, upon adjacent streets or adjoining property.

**7.3 Owner Liability:** The Board, or architectural committee if appointed, shall have absolute discretion to determine whether any maintenance, repair or replacement of the exterior of any Residence (including skylights, second story windows over garages, gutters and downspouts) or of any landscaping located upon a Lot is necessary. If maintenance, repair or replacement work is required to be performed on any Lot, and if the Owner's failure to accomplish such work is detrimental to the appearance of such Lot or interferes in any way with the enjoyment by other Owners of their Lots or of the Common Area, the Board, or architectural committee, shall give written notice, either personally or by first-class mail, postage prepaid, to the Owner of such Lot specifying the work which must be accomplished. If the Owner has not commenced such work within thirty (30) days after the date of delivery of the notice (the date of delivery being the date the notice is personally served or the date of postmark if mailed), or if the work, once commenced, is not diligently pursued to satisfactory completion, the Board, or architectural committee, in addition to any other remedies available to it at law or in equity or pursuant to the Governing Documents, may undertake the work on behalf of and at the expense of said Owner; provided, however, that reasonable (no less than 15 days) written notice first shall have been given to the Owner. The Association shall charge the full amount of the cost of any such work to such Owner as a Reimbursement Assessment as provided in Article V of this Amended Declaration.

**7.4 Right Of Entry:** For the purpose of inspecting for hazardous conditions or performing any maintenance, repair or replacement which the Association is obligated or authorized to perform, the Association, through its duly authorized agents or employees, shall have the right, after reasonable written notice to the Owner or in emergency situations, to enter upon any Lot during reasonable hours on any day to the extent required in order or in emergency situations to accomplish such inspection, maintenance, repair or replacement. If an Owner fails to perform maintenance and/or repair which he is obligated to perform pursuant to the Governing Documents, the Board may, after determining that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature and/or value of the Development, perform such maintenance and/or repair; the costs of such maintenance and/or shall be charged to the Owner of the Lot as a reimbursement assessment.

**7.5 Landscaping:** All landscaping (whether Common Area or Lots) within the Development shall be maintained in a neat and orderly condition; any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced; and all lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. The Association shall be responsible for all landscaping upon unenclosed portions of Lots except that the Owner of each Lot whose garage is detached from his or her Residence shall be solely responsible for landscaping the area situated between his or her garage and his or her Residence.

**7.6 Appeal:** An Owner who receives from the architectural committee a notice requiring such Owner to perform any maintenance, repair or replacement work pursuant to Section 7.3 of this Article may, within thirty (30) days after the date of delivery of the notice, appeal to the Board by submitting objections in writing to the mailing address of the Association. The matter may be heard at the next regularly scheduled meeting of the Board, but in no event more than sixty

(60) days after submission of the appeal. Notice of the hearing date shall be given to the Owner at least ten (10) days in advance, even if mailed, and in the discretion of the Board, to any other interested party. At the hearing, the Owner, and, in the Board's discretion, any other interested person may present information relevant to maintenance or repair work. Within ten (10) days after the hearing, the Board shall issue and deliver to Owner, either personally or by first-class mail, postage pre-paid, a written ruling. The ruling of the Board shall be final. The Board may take action pursuant to section 7.3 above.

**7.7 Condemnation Of Common Area:** If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners as their interests appear according to the respective fair market values of their Lots at the time of condemnation, as determined by an independent appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board. The Association shall represent the interests of all Owners.

## ARTICLE VIII

### GENERAL PROVISIONS

**8.1 Responsibility For Damage:** If any damage results to any portion of the Common Area from the negligent or intentional act or omission of an Owner or occupant of a Lot, or a member of an Owner's family or an Owner's tenants, contract purchasers, guests, or pets, or from the utilities located within such Lot, or from vegetation growing within such Lot, the cost of making any necessary repairs shall be the responsibility of the Owner of the particular Lot involved. If the Owner of such Lot fails promptly to repair such damage or does not repair such damage to the satisfaction of the Architectural Committee, the Board may have the damage repaired and charge the cost thereof to the Owner as a reimbursement assessment as provided in Article V of this Declaration.

**8.2 Nuisance:** Every act or omission whereby any provision of the Governing Documents is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, by the Association or by any Member, whether the relief sought is prohibitive or mandatory.

**8.3 Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all of the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association shall be required to obtain compliance with any of the provisions of the Governing Documents, it shall be entitled to recover its costs and reasonable attorneys' fees incurred in obtaining such compliance.

**8.4 Amendment:** This Declaration may be amended by the affirmative vote or written consent Members in Good Standing comprising at least 50% of the Total Voting Power of the Association. Any amendment must be recorded.

**8.5 Term:** The Covenants, Conditions and Restrictions of this Amended Declaration shall run with and bind the property, and shall inure to the benefit of, and shall be enforceable by, the Association or the Owner of any Lot subject to this Amended Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Amended Declaration is recorded, after which time, these covenants, conditions and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded agreeing to terminate the same.

**8.6 Construction; Severability; Singular And Plural; Captions; Conflict:**

- A. **Restrictions Construed Together:** All of the covenants, conditions and restrictions of this Amended Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the Association, as set forth in the Recitals of this Amended Declaration.
- B. **Restrictions Severable:** Notwithstanding the provisions of subparagraph A. above, the provisions of this Amended Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- C. **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.
- D. **Captions:** All captions or titles used herein are intended solely for convenience of reference and shall not affect that which is set forth in any of the terms or provisions of this Amended Declaration.
- E. **Conflict:** In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

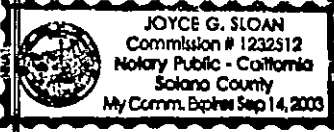
IN WITNESS WHEREOF, we, the Members of the Association, constituting more than two-thirds (2/3) of all Members of the Association, hereby affirm, approve, and adopt the foregoing Amended Declaration of Covenants, Conditions and Restrictions of the Association, in accordance with Section 8.3 of the Declaration of Covenants, Conditions and Restrictions recorded December 29, 1994, Solano County Official Records, by means of the signatures of the President and Secretary of the Association, duly authorized by the affirmative vote or written consent of more than two-thirds (2/3) of all Owners of the aforesaid Association, which Amended Declaration of Covenants, Conditions and Restrictions shall be recorded with the County Recorder, Solano County, California.

Dated: 2/5/<sup>2000</sup>, 1999

COSTA VISTA HOMEOWNERS ASSOCIATION, INC.  
A California Non-Profit Mutual Benefit Corporation

By: Charles Williams, President

By: Stephanie Carr, Secretary

State of California County of <u>Solano</u>		<b>OPTIONAL SECTION</b>	
On <u>2-5-00</u> before me, <u>Joyce G. Sloan</u> DATE NAME, TITLE OF OFFICER E.O., "JANE DOE, NOTARY PUBLIC"	CAPACITY CLAIMED BY SIGNER Through states does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.		
personally appeared <u>Charles Williams</u> NAME(S) OF SIGNER(S)	<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER(S)		
<input type="checkbox"/> personally known to me - OR - <input checked="" type="checkbox"/> proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument he person(s) or entity upon behalf of which the person(s) acted, executed the instrument.	TITLE(S) <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER: _____		
	WITNESS my hand and official seal.		SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)
	<u>Joyce G. Sloan</u> SIGNATURE OF NOTARY PUBLIC		

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano

On Feb. 19, 2000 before me, Joyce G. Sloan  
Date Name and Title of Officer (e.g., "Jurat Dea, Notary Public")

personally appeared Stephen E. Curran  
Name(s) of Signer(s)

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



WITNESS my hand and official seal.

Joyce G. Sloan  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Amended CCR's & Bylaws - Costa Vista

Document Date: \_\_\_\_\_ Number of Pages: 38

Signer(s) Other Than Named Above: Charles Williams

### Capacity(ies) Claimed by Signer(s)

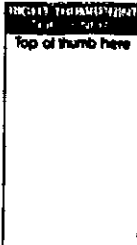
Notice: Document's Contents may not reproduce micrographically due to poor legibility.

Signer's Name: Stephen E. Curran

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer is Representing: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

