

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

**BANCROFT VILLAGE  
HOMEOWNERS ASSOCIATION**  
c/o Berding & Weil  
3240 Stone Valley Road West  
Alamo, CA 94507  
(925) 838-2090



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## **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BANCROFT VILLAGE HOMEOWNERS ASSOCIATION**

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

### **RECITALS**

A. WHEREAS, the Association recorded a Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions of Bancroft Village Homeowners Association and Restated Declaration of Covenants, Conditions and Restrictions -- Bancroft Village Homeowners Association, dated December 13, 1993 and recorded on December 14, 1993 as Document No. 93 356303 in the Official Records of Contra Costa County, State of California (hereinafter collectively referred to as the "1993 Declaration"); and

B. WHEREAS, the 1993 Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Contra Costa, State of California, and more particularly described as follows:

Subdivision 4670 filed January 13, 1975, in Map Book 175 of Page 3, Contra Costa County Records; Subdivision 4824, amended map filed June 24, 1977, Map Book 198, page 27, Contra Costa County Records; Subdivision 4829, filed January 11, 1978, in Book 206 of Maps, page 23, Contra Costa County Records; and Subdivision 5238, filed January 11,

1978, Map Book 206, page 34, Contra Costa County Records; and

C. WHEREAS, the Members, constituting the record owners of at least fifty-one percent (51%) of the Lots in the Development, desire to amend, modify, and otherwise change the 1993 Declaration pursuant to Article XIII, Section 3 thereof; and

D. NOW, THEREFORE, pursuant to Article XIII, Section 3 of the 1993 Declaration, the Members, constituting the record owners of at least fifty-one percent (51%) of the Lots in the Development, do hereby declare that the aforesaid 1993 Declaration is hereby AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bancroft Village Homeowners Association; and

E. 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*; and

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

G. IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in California *Civil Code* section 1354, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or the owner or holder of any interest therein and their heirs, successors, and assigns.

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## ARTICLE 1                      DEFINITIONS

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- 1.1     Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation,

interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments.

- 1.2 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 9.5.
- 1.3 Architectural Committee. "Architectural Committee" shall mean the Committee, if any, appointed by the Board pursuant to Article 13 of this Declaration.
- 1.4 Articles. "Articles" shall mean the Articles of Incorporation of Bancroft Village Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.6 Association. "Association" shall mean Bancroft Village Homeowners Association, its successors and assigns.
- 1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.8 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.
- 1.9 Capital Improvement. "Capital Improvement" shall mean the original construction and/or acquisition of an improvement of substantial value with a useful life of more than one (1) year, as distinguished from the repair, upgrading, or replacing of an existing improvement.
- 1.10 Common Area. "Common Area" consists of the land owned by the Association. It includes those facilities generally available to Owners and Residents, such as certain streets, walkways, landscaped areas and recreational facilities. "Common Area" is more particularly described as those areas of land shown on any recorded subdivision map of the Development and described as Parcels "A", "B", "C" and "D" and "Private Streets" as shown on the Map of Subdivision 4670, filed January 13, 1975, Map Book

175, page 33, in the Official Records of Contra Costa County, and other areas of land similarly devoted to the common use portions of Subdivision 4824, amended map filed June 24, 1977, Map Book 198, page 27, in the Official Records of Contra Costa County; Subdivision 4829, filed January 11, 1978, in Book 206 of Maps, page 23, in the Official Records of Contra Costa County; and Subdivision 5238, filed January 11, 1978, Map Book 206, page 34, in the Official Records of Contra Costa County.

- 1.11 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.12 Declaration. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bancroft Village Homeowners Association, recorded in the Office of the County Recorder of Contra Costa County, California, and any duly recorded amendments thereof.
- 1.13 Development. "Development" shall mean all the real property described in the Declaration comprising the Bancroft Village Homeowners Association planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 1.14 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 9.9.
- 1.15 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of a particular Lot. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Lot; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.
- 1.16 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules.

- 1.17 Lot. "Lot" shall mean any plot of land shown upon any Subdivision Map including any Residence and other structures located thereon, with the exception of the Common Area. There are 403 Lots in the Development.
- 1.18 Maintenance. "Maintenance" or to "maintain" (whether the term is capitalized or not) 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.
- 1.19 Member. "Member" shall mean an Owner.
- 1.20 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all Assessments and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents.
- 1.21 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.22 Party Wall. "Party Wall" shall have the meaning set forth in Section 4.1.
- 1.23 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 9.8.
- 1.24 Repair. "Repair" (whether the term is capitalized or not) shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.25 Replacement. "Replacement" or to "replace" (whether the term is capitalized or not) shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

- 1.26 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.
- 1.27 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 1.21 above.
- 1.28 Rules. "Rules" shall mean the policies, rules, and regulations governing the administration, management, operation, use, and occupancy of the Development, including the use of the Common Area and facilities, the personal conduct of the Members, members of their household, their pets, their tenants, and their guests within the Development, enforcement of the Governing Documents, and any other matter which is within the jurisdiction of the Association, as adopted, published, or amended by the Board from time to time and subject to applicable law including *Civil Code* section 1357.100 *et seq.*
- 1.29 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 9.7.
- 1.30 Subdivision Map. "Subdivision Map" or "Map" shall mean, collectively, the following: (i) Map of Subdivision 4670 filed January 13, 1975, in Map Book 175 at Page 3, in the Official Records of Contra Costa County; (ii) Map of Subdivision 4824, amended map filed June 24, 1977, in Map Book 198 at page 27, in the Official Records of Contra Costa County; (iii) Map of Subdivision 4829, filed January 11, 1978, in Map Book 206 at page 23, in the Official Records of Contra Costa County; and (iv) Map of Subdivision 5238, filed January 11, 1978 in Map Book 206, at page 34, in the Official Records of Contra Costa County.
- 1.31 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

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## ARTICLE 2                      PROPERTY SUBJECT TO THIS DECLARATION

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- 2.1     Legal Description. The property subject to this Declaration and to the jurisdiction of the Association is described in Recital Paragraph B.
- 2.2     Classification of Property. All of the property subject to the Declaration is divided into the following categories:
- (a)     Common Area as defined in Section 1.10.
  - (b)     Exclusive Use Common Area as defined in Section 1.15. Exclusive Use Common Area shall include the following:
    - (i) private walkways, (ii) private driveways, and (iii) front and back courtyards located within the boundaries of the perimeter fence surrounding the Lot.
  - (c)     Lots as defined in Section 1.17.
- 2.3     No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.

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## ARTICLE 3                      COMMON AREA

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- 3.1     Use of Common Area Generally. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members of the Association, members of their household, tenants, Resident Contract Purchasers, and guests as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons.
- 3.2     Exclusive Use Common Area. Certain portions of the Common Area, referred to as "Exclusive Use Common Areas," are subject, as the servient tenements, to exclusive easements in favor of the Lots to which they are attached or assigned, as the dominant

tenements, and such exclusive easements shall be appurtenant to those designated Lots.

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

- (a) The right of the Board of Directors to establish and enforce Rules governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board to suspend an Owner's right to use the recreational facilities as provided in Subsection 14.8.2;
- (d) The right of the Board, as set forth in Section 5.4, to grant easements, licenses and rights-of-way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (e) The right of the Board, subject to approval of the Members as set forth in Section 8.6, to sell, dedicate or otherwise transfer property owned by the Association;
- (f) The right of the Board, as set forth in Section 8.7, to grant to Owners easements, licenses, and rights-of-way upon the Common Area;
- (g) The right of the Board, subject to approval of the Members as set forth in Section 8.8, to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; and



- (h) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, Maintenance, Repair, or Replacement for the benefit of the Common Area or the Owners in common.

- 3.4 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment, including easements, in the Development to the members of his or her household, tenants, Contract Purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot. It is the express purpose and intent of this Section 3.4 to limit the right of use and enjoyment of the Common Area to Residents of the Development and their guests. Any rights of enjoyment delegated pursuant to this Section 3.4 are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.
- 3.5 Notice Regarding Household Members, Tenants, or Contract Purchasers. Each Owner shall notify the Board of Directors of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Each Owner, tenant, or Contract Purchaser shall also notify the Board of Directors of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has delegated any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser.
- 3.6 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 3.7 Mechanic's Liens. In the event there shall be filed against the Common Area a "Notice of Mechanic's Lien" for, or purporting to be for, labor or materials alleged to have been furnished or

delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, and notwithstanding any other provision of the Governing Documents concerning notice and hearing, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

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#### **ARTICLE 4                      PARTY WALLS**

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- 4.1     General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences within the Development and placed on or near the dividing line between the Lots shall constitute a "Party Wall," and, to the extent not inconsistent with the provisions of this Article 4, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.
- 4.2     Sharing of Repair and Maintenance. The cost of reasonable Maintenance and Repair of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.
- 4.3     Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make

use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, 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.

- 4.4 Weatherproofing. Notwithstanding any other provision of this Article 4, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 4.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article 4 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.
- 4.6 Resolution of Party Wall Disputes. Party Walls are not Common Area and are not the responsibility of the Association. Any dispute concerning a Party Wall, or otherwise under this Article 4, shall be subject to the alternative dispute resolution provisions of Section 14.17.

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## ARTICLE 5                      EASEMENTS

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- 5.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements provided in Sections 3.2 and 3.3, there are hereby specifically reserved and granted for the benefit of the Lots and Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 5.
- 5.2 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Lots due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred

due to willful unauthorized conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure on any Lot is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Lot agree that minor encroachments (*i.e.*, of less than five feet) over adjoining Lots and/or Common Area shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Lot and its Owner are hereby declared to have an easement for retaining walls, footings, roofs, eaves, and all other encroachments as originally constructed over each adjoining Lot and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from such roofs, gutters, eaves, and all other encroachments over each such adjoining Lot and/or Common Area.

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

- 5.4 Easements, Licenses and Rights-of-Way Granted by Board. The Board shall have the power to grant and convey to any person or entity easements, licenses and rights-of-way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and

not inconsistent with the purposes and interests of the Association, and each purchaser, in accepting a deed to a Lot, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Lot and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

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## ARTICLE 6                      USE RESTRICTIONS

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- 6.1     Residential Use. Except to the extent provided in Section 6.4, Lots shall be occupied and used for residential purposes only.
- 6.2     Rental of Lots. Any leasing or renting of any Lot or Residence within the Development shall be subject to the provisions of Article 7.
- 6.3     Time-Share Arrangements. No Lot or Lots or any portion thereof in the Development shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Lot or Lots or any portion thereof or Residence thereon in the Development rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This Section 6.3 shall not be construed to limit the personal use of any Lot or any portion thereof in the Development by any Owner and his or her or its social or familial guests.
- 6.4     Restriction on Business.
  - 6.4.1   Types of Businesses Allowed. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except: (i) such

professional and administrative professions as may be permitted by applicable governmental ordinances and that have no external evidence of such activity, cause no significant increase in traffic within the Development, comply with all applicable governmental ordinances and have all necessary permits and/or licenses, and are merely incidental to the use of the Lot as a Residence; and (ii) care facilities to the extent specifically authorized by statute.

6.4.2 External Evidence. External evidence may include, but is not limited to, signs, the presence of employees, or business traffic including clients, vendors or delivery services.

6.4.3 Indemnification. To the fullest extent permitted by law, every Owner or Resident who conducts or engages in any business, commercial endeavor, or profession within any Residence or the Development, or whose occupant or tenant does so, agrees to and shall indemnify and defend the Association, its officers, directors, employees, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, arising out of the conduct or presence of such activity, including but not limited to attorneys' fees, any claims for consequential damages, and any claims arising or alleged to arise out of the enforcement or nonenforcement by the Association of the Governing Documents, including but not limited to the restriction on business contained in this Section 6.4. Without limiting the generality of the foregoing, all costs, including attorneys' fees, incurred by the Association to enforce this Section 6.4 against any occupant of the Unit or to defend any claim subject to this Section 6.4 shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

6.5 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots

or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Lot and Residence. As provided in Section 14.1, the Board has the sole authority and discretion to decide whether or not to take action to abate a nuisance or an alleged nuisance.

- 6.6 Use of Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.
- 6.7 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy maintained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board.
- 6.8 Requirement of Architectural Approval. As addressed in Article 13 below, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Board.
- 6.9 Basketball Standards and Other Sports Apparatus. No fixed or permanent basketball standards or other fixed sports apparatus shall be placed upon or attached to any portion of the Development. Portable basketball standards and other portable sports apparatus are permitted provided they are removed to the Owner's garage by the end of the day.

- 6.10 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations and Architectural Rules, if any.
- 6.11 Outside Drying and Laundering. Outside clothesline or other outside clothes washing, drying, or airing facilities may only be maintained in the rear private courtyard areas of Lots, provided (1) they are located beneath the fence line, and (2) they shall not be maintained elsewhere in the Development.
- 6.12 Satellite Dishes and Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area including the outside of any Unit, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, (iii) those initially installed during the original construction of the buildings located in the Project, or (iv) those antennas or satellite dishes which, by law, cannot be prohibited by the Association. The Board may adopt Rules regarding the installation and maintenance of antennas and satellite dishes.
- 6.13 Animals.
- 6.13.1 Limitations on Pets. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, raised or bred for commercial purposes within the Development. Except for household pets, no other animals, birds or fowl may be kept within the Development. No more than two (2) dogs and not more than three (3) cats over six (6) months of age may be kept beyond 30 days on a single Lot.
- 6.13.2 Owner's Responsibility for Pets. Pet owners are required to pick up after their pet(s) and are expected to have a scooper and/or other disposal means with them when walking their pet(s). While in the Common Area each dog must be restrained on a leash held by a responsible person capable of controlling it. Owners and Residents with pets are required to keep their rear yards free of offensive odors at all times.
- 6.13.3 Liability for Pets. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other



persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner agrees to and shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner, members of his or her household, guests, tenants, or invitees.

6.13.4 Miscellaneous Pet Provisions. Owners and Residents with outdoor cats are encouraged to contain their cats to their own Residence or patio area. Complaints concerning dog barking, whining, crying, offensive odors and unsanitary conditions will be discussed with the Owner involved and repeated complaints may subject the Owner to a fine, other sanctions and/or legal action. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any person, pet or property.

6.14 Trash Disposal. Trash, garbage, accumulated waste plant material, and other waste and refuse shall be deposited only in covered sanitary containers kept in the Owner's garage. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of any Lot or elsewhere in the Development, except in such containers. Trash containers must be returned to garages the same day as trash pick-up. No trash is to be placed outside for pick-up for more than twenty-four (24) hours.

6.15 Construction Materials, Construction Debris. No portion of the Development shall be used for the storage or staging of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.

6.16 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or

operated upon a Lot except as is customary and necessary in connection with approved construction.

6.17 Signs, Banners, Flags. No sign, poster, banner, or flag of any kind shall be displayed to the public view from any portion of the Development except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Noncommercial signs or posters no larger than 9 square feet in size and noncommercial flags or banners no larger than 15 square feet in size, displayed upon a Lot or Residence, and limited to the extent permitted by *Civil Code* section 1353.6;
- (c) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and the Architectural Rules and reasonably located on a Lot advertising a Lot for sale or rent;
- (d) A single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
- (e) Other signs which by law cannot be prohibited;
- (f) Signs approved by the Board located at or near any entrance to the Development identifying the Development;
- (g) Signs required for traffic control and regulation of streets or open areas within the Development;
- (h) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association; and
- (i) A flag of the United States subject to any city or county restrictions as to size and as to time, place, and manner of display.

6.18 Vehicles and Parking. Vehicles and parking in the Development are subject to the following restrictions:

- (a) The speed limit for vehicles traveling in the Development is fifteen (15) miles per hour. Vehicles must obey all posted stop signs.
- (b) On-street parking in the courts located in the Development is prohibited at all times except on Augustus Court across from the Residences located at 1905 through 1941 Augustus Court only. On-street parking is permitted on the following streets only: LaCorso Drive, LaCorso Circle, Via Appia, and Cabot Drive.
- (c) Parking on lawns and landscaped areas is prohibited at all times.
- (d) Parking in areas designated "Guest Parking" is for guests only.
- (e) Commercial vehicles may not be parked overnight unless parked in the Owner's or Resident's driveway. The term "commercial vehicle" does not include sedans or pickup trucks under one-half (½) ton which are used for both business and personal uses, provided that any signs or markings of a commercial nature in such vehicles shall be unobtrusive and inoffensive as determined by the Board in its sole discretion.
- (f) Boats, campers, motor homes, and trailers may be parked in driveways and on permitted streets (*i.e.*, on the streets identified in Subsection 6.18(b) above) only if they are connected to the vehicles that move them and then only for a maximum of one overnight before a trip and one overnight after a trip. Extra parking time must be approved by the Association's manager. Parking of other recreational vehicles in the Development is prohibited.
- (g) Maintenance and repair of vehicles while parked in the Common Area (which includes Association-owned streets, courts, lawns) is prohibited. No vehicle may be displayed in the Common Area for sale, lease or rent.
- (h) Bicycle, motorcycle, scooter, motorbike riding and skate boarding on walkways is prohibited.

- (i) Subject to compliance with applicable law, any vehicle parked in a red-zone may be towed by the Association without notice.
- (j) Subject to compliance with applicable law, vehicles parked over five (5) days on any Common Area, including vehicles moved to avoid citation, may be cited and towed by the Association.
- (k) Subject to compliance with applicable law, vehicles without current registration may be cited and towed by the Association.
- (l) Owners and Residents are required to inform guests of the restrictions contained in this Section 6.18.
- (m) The Board shall have the authority to adopt "Parking Rules" and policies consistent with the restrictions contained in this Section 6.18. The Board shall also have the power to impose fines and other sanctions for violations of this Section 6.18 and Parking Rules adopted by the Board.

6.19 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Development, except in strict compliance with the provisions of this Declaration, including Article 13 concerning approval by the Board. In no event shall any such structure be used as a residence or for residential purposes, either temporarily or permanently.

6.20 No Subdivision or Merger of Lots. No Lot may be subdivided or merged for any reason.

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## ARTICLE 7                      RENTING OR LEASING

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7.1 Requirements for Renting. An Owner renting his or her Lot shall:

- (a) do so pursuant to a written lease or rental agreement. The lease or rental agreement shall be for an initial term of at least one year and shall expressly provide that its

terms are subject to all of the provisions of the Governing Documents and that failure of the tenant, members of the tenant's household, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of such lease or rental agreement;

- (b) file a copy of the signed lease or rental agreement with the Board. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board;
- (c) provide the tenant(s) with a copy of the Governing Documents and any subsequent changes thereto; and
- (d) notify the Board of the name of each tenant and of the members of the tenant's household.

7.2 Association As Third Party Beneficiary. Notwithstanding the failure of an Owner to comply with the requirements of Section 7.1, and whether or not it is so stated in a written contract or other agreement between such Owner and such tenant, the Owner and the tenant of any Lot subject to this Declaration shall be conclusively deemed to have agreed that the Association is an intended third party beneficiary to the contract between the Owner and the tenant; that failure of the tenant, members of the tenant's household, or guests to comply with applicable provisions of the Governing Documents shall constitute a breach of the terms of the contract between the Owner and the tenant; and that the Association shall have the right but not the obligation to enforce the contract and to pursue every remedy available under the contract, under this Declaration including but not limited to entering upon and taking possession of such Owner's Lot pursuant to Section 9.15, or under the law. This Section 7.2 shall apply to any tenancy commencing or extended or renewed after the date this Declaration is recorded.

7.3 Limitation on Number of Permitted Rentals. Except as provided in this Section 7.3, not more than eighty-one (81) of the Lots within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner together with members of his or her household or temporary guests, such that at least three hundred twenty two (322) of the Lots are Owner-occupied.

- 7.3.1 Grandfathered Lots; Hardship Waivers. The limitation on the number of permitted rentals as set forth in Section 7.3 shall not apply to any Member who is the Owner of a Lot on the date this Declaration is recorded, but shall apply to any such Lot or Lots upon transfer of title to such Lot subsequent to the date this Declaration is recorded. The Board shall have the right but shall not be obligated to waive the limitation on the number of permitted rentals or the order of priority of requests to rent in cases of deserving and unusual hardship; provided (i) such waiver shall be for a limited term, not to exceed one (1) year, (ii) the Owner in question shall deliver to the Board a signed statement representing that he or she will retake possession and occupancy of the Lot as a Resident thereof upon the expiration of such limited term, and (iii) such waiver shall be subject to such other conditions as the Board may determine, which conditions may include but shall not be limited to Board review and approval of the lease for such limited term.
- 7.3.2 Implementation. Upon request from the Board after this Declaration is recorded, each Owner then renting or leasing a Lot shall provide to the Board such information as the Board may reasonably require to implement the provisions of this Section 7.3, including but not limited to the names of the tenants and the members of the tenants' household. The Owner may redact or blackout the financial terms (i.e., the amount of rent and security deposit) from the copy provided to the Board. Any permitted rental or leasing of a Lot commencing after this Declaration is recorded and the renewal of a tenancy in effect on the date this Declaration is recorded shall be pursuant to a written lease or rental agreement in accordance with Section 7.1.
- 7.3.3 List of Rented Lots. The Board shall establish and maintain a list of all Owners currently leasing or renting a Lot, which list shall include: (i) the Owner's name and mailing address, (ii) the address of the rented Lot and the Owner's record date of ownership, and (iii) term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board.

- 7.3.4 Written Request to Rent. Any Owner desiring to rent his or her Lot shall submit to the Board a written request to rent, which shall state: (i) the Owner's name and mailing address, (ii) the Lot address and the Owner's record date of ownership, (iii) the proposed lease term and the number of tenants; and (iv) such other information as the Board may reasonably require from time to time. The Owner shall have the right, upon written request delivered to the Association, to appear in person before the Board to discuss the request to lease or rent his or her Lot.
- 7.3.5 Priority of Requests to Rent. The Board shall establish and maintain a priority list of requests to rent, organized in the order of date received by the Board, which shall include the name and mailing address of the requesting Owner, the address of the Lot in question, the Owner's record date of ownership, and date the written request was received by the Board.
- 7.3.6 Review of Request to Rent. Within thirty (30) days after receipt of a complete request, the Board shall review and shall approve or deny an Owner's request to rent. Written notice of the Board's decision shall be transmitted to the requesting Owner and if the request is denied, the notice shall specify the reason(s) for denial. The Board shall approve the application unless doing so will increase the number of Lots leased or rented within the Development to more than the number permitted under Section 7.3, or will otherwise result in the violation of any provision of this Article 7. When the number of Lots leased or rented in the Development is less than the number permitted under Section 7.3, the Board shall authorize the Owner who submitted the earliest received application to lease or rent his or her Lot. When the number of Lots leased or rented in the Development equals or exceeds the number permitted under Section 7.3, Owner requests to rent shall be added to the priority list maintained pursuant to Subsection 7.3.5.
- 7.3.7 Reconsideration of Denied Request. If a request to rent is denied, the requesting Owner shall have a right, upon written request, to reconsideration at a hearing by the Board in accordance with Section 14.13. Within fifteen

(15) days after such reconsideration, the Board shall transmit its written determination to the requesting Owner.

7.3.8 Duration of Authorization to Rent. Subject to the provisions of Subsection 7.3.1 concerning grandfathered Owners/Lots and, except in the case of a hardship waiver granted pursuant to Subsection 7.3.1, once an Owner obtains permission to lease or rent a Lot, that Owner shall have the right to continue renting that Lot to consecutive lessees or renters or for consecutive terms; provided such lease or rental is otherwise in compliance with the provisions of this Article 7 and is without interruption of more than thirty (30) days, without having to submit or re-submit a request to rent.

7.3.9 Decision of Board Conclusive. The decision of the Board in approving or denying a request to rent shall be final and conclusive.

7.4 Owner's Responsibility for Tenant's Actions. Each Owner leasing or renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Residences, Lots, and Common Area and for each tenant's compliance with the provisions of the Governing Documents.

7.5 Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees, arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, including exercise of the Association's rights under Section 9.15, injunctive relief against the Owner or the occupant pursuant to Section 14.6, and contract enforcement by the Association as an intended third party beneficiary pursuant to Section 7.2, shall be



reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

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## ARTICLE 8                      HOMEOWNERS ASSOCIATION

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- 8.1     Management and Operation. The Association shall have the power and authority to manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the provisions of applicable law. 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, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.
- 8.2     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.
- 8.3     Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Lot, as more particularly set forth in the Bylaws.
- 8.4     Association Rules. Subject to applicable law (including *Civil Code* section 1357.100 *et seq.* regarding notice and procedures), the Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce Rules.
- 8.5     Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of Capital Improvements upon the Common Area; provided, however, that the prior approval of a majority of the Total Voting Power shall be required for any Capital Improvement which costs in excess of two percent (2%) of the Association's budgeted gross expenditures for the current year.

- 8.6 Sale, Transfer or Dedication of Association Property. The Board of Directors shall not in any fiscal year sell, transfer or dedicate property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of a majority of the Total Voting Power of the Association.
- 8.7 Easements, Licenses and Rights-of-Way to Owners. The Board shall have the power to grant and convey easements, licenses for use and rights-of-way in, over, or under the Common Area or any portion thereof to Owners, for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interests of the Association.
- 8.8 Mortgage or Pledge of Association Property. The Board acting on behalf of the Association shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and other property of the Association as security for money borrowed by the Association.

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## ARTICLE 9                      ASSESSMENTS AND LIENS

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- 9.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges.
- 9.1.1 Association's Power to Collect. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for.
- 9.1.2 Assessments Are a Personal Obligation. The Assessments levied by the Association pursuant to this Declaration,

together with all Additional Charges, shall be a personal debt and obligation of the Owner against whom they are assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns.

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

9.1.4 Owner's Liability After Transfer. After an Owner transfers of record his or her interest in any Lot, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is recorded in the Office of the County Recorder of Contra Costa County.

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

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

- 9.2.2 Priority of Liens. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the Assessments and Additional Charges on such Lot that become due and payable subsequent to the lien being foreclosed upon.
- 9.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Development, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Development, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Lots situated within the Development or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Development or of the affairs of the Association, or the benefit of the Lot Owners, or for the enforcement of the Governing Documents.
- 9.4 Authority of the Board. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.
- 9.5 Annual Assessment.
- 9.5.1 Calculation of Estimated Requirement. Prior to the beginning of each fiscal year, the Board shall estimate the net funds required by the Association for such fiscal year to manage, administer, operate, and maintain the Development, to conduct the affairs of the Association, and to perform all of the Association's duties in accordance with this Declaration, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis. The amount of estimated required funds shall constitute the Annual Assessment.

- 9.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots within the Development. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.
- 9.5.3 Notice of Annual Assessment. Not less than thirty (30) days and not more than ninety (90) days prior to the beginning of each fiscal year, the Board shall send to each Owner a notice of the amount of the Annual Assessment allocated to his or her Lot, except that if there is an increase in the Annual Assessment over the previous year, in compliance with *Civil Code* section 1355(d) the notice shall be mailed by first class mail to the Owner not less than thirty (30) days and not more than sixty (60) days before the due date of the increased Annual Assessment.
- 9.5.4 Surplus Funds. If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in *Internal Revenue Code* section 277 for the year ended, such excess shall be applied against the subsequent tax year's member assessments as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.
- 9.6 Permitted Increases in Annual Assessment. Pursuant to *Civil Code* section 1366(b), except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

9.7 Special Assessments.

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

9.7.2 Permitted Amount of Special Assessments. Except in the case of an emergency situation as defined in *Civil Code* section 1366(b), in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year (or such other limitation on the amount as may be imposed by law), except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

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

9.7.4 Notice of Special Assessment. Upon the imposition of a Special Assessment or an increase in a Special Assessment, in compliance with *Civil Code* section 1366(d) notice shall be sent by first class mail to each Owner not less than thirty (30) days and not more than sixty (60) days prior to the due date of the Special Assessment.

9.8 Reimbursement Assessments. The Association may levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the

Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his or her Lot into compliance. A Reimbursement Assessment may also be levied to reimburse the Association for damages to property maintained by the Association (including property located within an Owner's Lot or Exclusive Use Common Area) where such damage is due to the act or neglect of an Owner or any person or pet for whom the Owner is responsible. A Reimbursement Assessment shall include any costs, including attorneys' fees incurred by the Association and costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

- 9.9 Enforcement Assessments. Subject to the requirements set forth in Section 14.8, the Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 9.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 9.11 No Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

- 9.12 Delinquent Assessments. Any installment or other portion of an Assessment not received within fifteen (15) days after its due date shall be delinquent and, to the fullest extent permitted by law, shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges.
- 9.13 Enforcement by Action at Law or Foreclosure. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, to the fullest extent permitted by law. To the extent prohibited by *Civil Code* section 1367.1(e), the amount of an Enforcement Assessment may not become a lien that is enforceable by non-judicial foreclosure.
- 9.13.1 Pre-Lien Notice. At least thirty (30) days prior to recording a "Notice of Delinquent Assessment" against a Lot to collect a debt that is past due, the Association shall provide written notice to the Owner of the Lot as required by *Civil Code* section 1367.1(a) or other applicable statute ("Pre-Lien Notice").
- 9.13.2 Prior to Recording a Lien. Prior to recording a Notice of Delinquent Assessment, the Association shall comply with all applicable requirements imposed by law, including offering to participate in internal dispute resolution (Section 14.16 of this Declaration) or Alternative Dispute Resolution (Section 14.17 of this Declaration) to the extent required pursuant to *Civil Code* section 1367.1(c)(1) and making the decision to record a lien for delinquent Assessments at an open meeting of the Board, to the extent required pursuant to *Civil Code* section 1367.1(c)(2).
- 9.13.3 Owner's Right to Discuss Payment Plan. To the extent provided in *Civil Code* section 1367.1(c)(3), an Owner may submit to the Board a written request to discuss a payment plan for a debt noticed in a Pre-Lien Notice. If the Owner's written dispute is mailed to the Board (as evidenced by a postmark or receipt of mailing) within fifteen (15) days after the postmark on the Pre-Lien Notice, the Board shall meet with the Owner within forty-



five (45) days of the postmark date of the Owner's written request unless there is not a regularly scheduled Board meeting within the period, in which case the Board, in its discretion, may hold a special meeting in executive session to meet with the Owner or may designate a committee of one or more Board members to meet with the Owner.

- 9.13.4 Notice of Delinquent Assessment. The amount of the past due debt noticed in the Pre-Lien Notice shall be a lien from and after the recording of a Notice of Delinquent Assessment. No later than ten (10) days after recordation, a copy of the Notice of Delinquent Assessment shall be mailed by certified mail in compliance with *Civil Code* section 1367.1(d) to every person whose name is shown as an Owner of the Lot in the Association records or in such manner and to such persons as may be required by applicable law.
- 9.13.5 Delinquent Assessment of Less than \$1,800. To the extent provided in *Civil Code* section 1367.4, delinquent Assessments totaling less than One Thousand Eight Hundred Dollars (\$1,800.00) that are less than twelve (12) months delinquent may not be collected by judicial or non-judicial foreclosure, but may be collected in any other manner provided by law including a civil action in small claims court, to the extent provided in *Civil Code* section 1367.4(b)(1), or recording a lien as provided in *Civil Code* section 1367.4(b)(2). Prior to recording such a lien the Association shall offer to participate in internal dispute resolution (Section 14.16 of this Declaration) to the extent required by *Civil Code* section 1367.4(b)(2).
- 9.13.6 Initiating Foreclosure. As provided in *Civil Code* section 1367.1(g), no procedures shall be initiated to foreclose the lien securing any noticed past due debt under this Article 9 until after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment. To the extent required pursuant to *Civil Code* section 1367.4(e), the Association shall offer to participate in internal dispute resolution (Section 14.16 of this Declaration) or Alternative Dispute Resolution (Section 14.17 of this Declaration). To the extent required pursuant to *Civil Code* section 1367.4(c)(2), a

decision to initiate foreclosure shall be made only by the Board in an executive session meeting.

9.13.7 Amount Due and Payable. Except with respect to the amount of any Enforcement Assessment, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

9.13.8 Notice of Initiating Foreclosure. To the extent required pursuant to *Civil Code* section 1367.4(c)(3), the Association shall provide written notice of initiating foreclosure to the record Owner of the Lot, including notice by personal service to any Resident Owner.

9.14 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the *Civil Code*, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale.

9.15 Right of Redemption. To the extent provided pursuant to *Civil Code* section 1367.4(c)(4), a non-judicial foreclosure to collect delinquent Assessments shall be subject to a right of redemption.

9.16 Assignment of Rents. As security for the payment of all liens provided for under this Declaration, each Owner hereby gives to and confers upon the Association the right, power, and authority during the continuance of such ownership to collect the rents, issues, and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligations under the Governing Documents in payment of any indebtedness to the Association or in

performance of any agreement thereunder including but not limited to those set forth in Article 7 of this Declaration, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, the Association may at any time, upon ten days written notice to such Owner, then (either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for such indebtedness) enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any such indebtedness, and in such order as the Association may determine or as required by applicable law. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default under the Governing Documents or invalidate any act done pursuant to this Declaration.

- 9.17 Remedies Cumulative. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.
- 9.18 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 9.19 Subordination to Lien of First Mortgage. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Declaration shall have priority as of the date of recording of the original declaration of covenants, conditions and restrictions applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any first Mortgage recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such first Mortgage, or pursuant to a power of sale contained

in any such Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

- 9.20 Funds to be Held in Association's Name. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated "BANCROFT VILLAGE HOMEOWNERS ASSOCIATION OPERATING ACCOUNT" and "BANCROFT VILLAGE HOMEOWNERS ASSOCIATION RESERVE ACCOUNT." The Assessments collected by the Association shall be properly deposited into such accounts. Withdrawal of funds from Association accounts shall be subject to the requirements of Section 10.3 of the Bylaws.
- 9.21 Funds Held in Trust for Owners. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 9.22 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Declaration.
- 9.23 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:
- (a) All property dedicated to and accepted by the City of Walnut Creek or County of Contra Costa or other local public authority and devoted to public use;
  - (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Lot; and

- (c) All Common Area.

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**ARTICLE 10                      DAMAGE OR DESTRUCTION  
   OF BUILDINGS; CONDEMNATION**

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10.1 Replacement or Repair of Association Property. In the event of damage to or destruction of the Common Area or other property of the Association or any part thereof, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against all of the Members of the Association as provided in this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. However, the Members may elect not to cause such Repair or Replacement by the vote or written consent of two-thirds (2/3) of the Total Voting Power of the Association. If there is an election, not to rebuild or repair, the applicable insurance proceeds shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association.

10.2 Rebuilding or Repair of Improvements on Lots.

10.2.1 Damage to Single Lot. If a single Lot is damaged or destroyed by fire or other casualty, the available insurance proceeds shall be paid to the Owner or Owners of such Lot, and/or the Mortgagee thereof, as their respective interests appear, and such Owner(s) and/or Mortgagee shall use the same to rebuild or repair such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to complete such work, the Owner(s) of the affected Lot shall pay such additional sums as may be necessary to complete such rebuilding and repair. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction.

- 10.2.2 Damage to Two or More Lots. If two or more Lots are damaged or destroyed by fire or other casualty, the amount of available insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Lots to their condition immediately prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and or rebuilding, the Board shall levy a Special Assessment against the Owners of the affected Lots pursuant to Section 9.7.
- 10.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.
- 10.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemnor obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

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**ARTICLE 11****MAINTENANCE OF PROPERTY**

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**11.1 Association Responsibility.**

**11.1.1 Common Area Maintenance.** The Association shall provide Maintenance, Repair, and Replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private streets, private driveways, walks and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), and all other real and/or personal property that may be acquired by the Association. The Association shall keep the foregoing property in good condition and repair. The Association shall further be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area, as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, as the Board, in its discretion, determines to be necessary. Notwithstanding any of the foregoing, the Association shall be responsible for Maintenance, Repair, or Replacement of Exclusive Use Common Area only to the extent such responsibility is expressly assigned to the Association in this Article 11 or by law.

**11.1.2 Maintenance of Lots and Exclusive Use Common Area.** The Association shall provide Maintenance, Repair and Replacement upon each Residence, Lot and Exclusive Common Area only as follows:

(a) Maintenance, Repair and Replacement of the stucco surfaces and wood trim boards on Residences; provided, however, that except as provided in Section 11.3, the Association shall not be responsible for any damage(s) underneath the stucco surfaces or wood trim boards;

(b) Maintenance, Repair and Replacement of roof covers, roof structures, gutters and downspouts;

(c) Maintenance, Repair and Replacement of all fences, gates and gate latches, except for wrought iron fences and wrought iron gates;

(d) Painting or varnishing, as applicable, of the exterior doors to the Residence installed at the time of the original construction of the Development; provided, however, that upon installation by the Owner of a new exterior door to the Residence, (1) varnishing of such door shall be the Owner's responsibility, and (2) the Owner shall be responsible for painting of such door upon installation (if applicable), and thereafter painting of such door shall be Association's responsibility;

(e) Painting or varnishing, as applicable, of the people entry doors to the garage installed at the time of the original construction of the Development; provided, however, that upon installation by the Owner of a new people entry door to the garage, (1) varnishing of such door shall be the Owner's responsibility, and (2) the Owner shall be responsible for painting of the people entry door upon installation, if applicable, and thereafter, painting of such door shall be Association's responsibility;

(f) Painting or varnishing, as applicable, of the garage doors installed at the time of the original construction of the Development; provided, however, that upon installation by the Owner of a new garage door, (1) varnishing of such door shall be the Owner's responsibility, and (2) the Owner shall be responsible for painting of the garage door upon installation, if applicable, and thereafter, painting of such door shall be Association's responsibility;

(g) Maintenance and Repair of only those exterior door frames that were installed at the time of the original construction of the Development, while the Owner shall be responsible for: (1) Replacement of the original exterior door frames, and (2) the Maintenance, Repair and Replacement of all subsequently installed exterior door frames;

(h) Maintenance and Repair of garage door frames that were installed at the time of the original construction of the Development, while the Owner shall be responsible for: (1) Replacement of the original garage door frames, and (2) the Maintenance, Repair and Replacement of all subsequently installed garage door frames;



(i) Repair and Replacement of private walkways that are not inside private courtyards (but not the Maintenance thereof);

(j) Repair and Replacement of private driveways, (but not the Maintenance thereof, including removal of oil stains);

(k) Repair and Replacement of only the fences, gates and gate latches in the front and rear private courtyards; noting, however, that the Owner shall be responsible for the Maintenance, Repair and Replacement of all trees (including roots), shrubs, other plants, landscaping, improvements (including irrigation systems) and other personal property located in such courtyard areas; and further, Owners shall keep all personal plants off of Residences and other structures, including but not limited to fences and gates; and

(l) Exterior caulking of chimneys, and to the extent necessary as determined by the Board in its sole discretion, reasonable steps to prevent further cracking of chimneys; provided, however, that the Association shall not be responsible for structural repairs to or other Maintenance, Repair or Replacement of chimneys.

11.2 Authority for Entry of Lot or Exclusive Use Common Area. The Association or its agents may enter any Lot or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with inspection of those areas and/or the performance of any Maintenance, Repair, construction, or Replacement for which the Board is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance notice, except in emergency situations notice shall be given as the exigencies of the situation reasonably permit.

11.3 Association Liability. Except as specifically provided in Article 10, Subsection 11.1.2 and Section 11.6, the Association shall not be responsible or liable for any Maintenance, Repair, or Replacement of or damages to a Residence, Lot or Exclusive Use Common Area

or any improvement thereon which are not otherwise covered by insurance of the Association or the affected Owner, except to the extent that the Owner can show that the need for such Maintenance, Repair, or Replacement was caused by the gross negligence or intentional misconduct of the Association, its employees, contractors, or agents in discharging the Association's maintenance responsibilities under this Declaration. The Board shall have the authority to adopt Rules and policies consistent with this Section 11.3.

11.4 Owner Responsibility.

11.4.1 Lots. Except to the extent that the Maintenance, Repair or Replacement of a Lot or Residence or other improvement on a Lot is expressly and clearly made the responsibility of the Association, or where a public or private utility is responsible, each Owner shall be responsible for the Maintenance, Repair and Replacement of his or her Residence, Lot and all improvements located on such Lot. Owners shall keep all personal plants off of Residences and other structures including but not limited to fences.

11.4.2 Exclusive Use Common Area. Except to the extent responsibility is expressly and clearly assigned to the Association, each Owner shall be responsible for Maintenance, Repair and Replacement of any Exclusive Use Common Area which is appurtenant to his or her Lot. Owner's responsibility shall include all plants in his or her courtyard area as well as the roots of all trees located in such areas.

11.4.3 Compliance With Architectural Provisions. An Owner's right and responsibility for Maintenance, Repair and Replacement of any portions of his or her Lot or Exclusive Use Common Area shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 13 of this Declaration.

11.5 Board Discretion. The Board shall have the absolute discretion to determine whether any Maintenance, Repair, or Replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development

or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board as provided in the Bylaws, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment in accordance with Section 9.8.

11.6 Pest Extermination: Responsibility for Repairs Due to Termites, Etc.

- (a) Any evidence of termites, or termite damage, pest or other organism (such as dry rot) damage shall be reported to the Board immediately.
- (b) The Board shall have the authority and power to determine if and when pest extermination is necessary in any Residence or building within the Development or upon any Lot. The Board has the further authority to cause any building, Residence, or other improvement upon a Lot to be tented and to require the Residents thereof to temporarily vacate the premises.
- (c) Any costs incurred for extermination services rendered with respect to any Residence shall be borne by the Owner of that Residence. If it is necessary for an entire building to be tented, the costs incurred therefor shall be divided equally among the individual Owners within the building.
- (d) The Association shall repair termite damage, pest and other organism (such as dry rot) damage to the Residence only where such damage is to components which are the Association's responsibility (as identified in Subsection 11.1.2 above), and the Owner shall be responsible for repair of all other damage. The Board shall determine, in its sole discretion, the repairs that will be made by the Association as well as when such repairs shall be made to the Association-maintained components that have been damaged by termites, pests or other organism (such as dry rot).

- 11.7 Owner Liability. In the event the need for any Maintenance, Repair, or Replacement is caused by the willful or negligent act or omission of an Owner or an Owner's household, tenants, Contract Purchaser, guests, invitees, or household pets, the cost of such Maintenance, Repair, or Replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment in accordance with Section 9.8.

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## ARTICLE 12                      **INSURANCE**

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- 12.1 Insurance Coverage to be Maintained by Association. The Association shall procure and maintain, as a common expense of all Owners, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:
- (a) fire insurance covering the full insurable replacement value of the Common Area with extended coverage, in the name of the Association for the benefit of all Owners;
  - (b) a blanket policy of fire and extended coverage insurance covering all Lot and Residence improvements, with limits equal to one hundred percent (100%) of the total replacement costs of such Residences as originally constructed. Any such blanket policy shall name as separately protected insureds the respective Owners, their mortgagees, and the Association as their respective interests may appear and the proceeds thereof shall be payable to the Association as trustee for the Owners;
  - (c) general liability insurance insuring the Association, its officers and directors, and the Owners against any liability incident to ownership or use of the Common Area, with limits of liability to be set by the Board but in no event less than those set forth in *Civil Code* section 1365.9, and containing a cross-liability endorsement and waiver of subrogation as to the Association, the officers and directors, and the Owners;
  - (d) directors' and officers' liability insurance with limits to be set by the Board but in no event less than those set forth in *Civil Code* section 1365.7, and containing a cross-

liability endorsement and waiver of subrogation as to the Association, the officers and directors;

- (e) workers' compensation insurance to the extent necessary to comply with any applicable laws;
- (f) standard fidelity bond covering all officers and directors of the Association, the manager, and any employees of the Association in an amount which shall be determined by the Board;
- (g) general liability insurance insuring the Owners against liability incident to ownership or use of the Owner's Lot or Residence, and containing a cross-liability endorsement and waiver of subrogation as to the Owners and each of them; and
- (h) any other insurance and bonds as the Board may from time to time deem necessary or desirable.

12.2 Annual Review of Policies. The limits and coverage of all insurance policies carried by the Association shall be reviewed at least annually by the Board and increased or decreased in its discretion.

12.3 Limitation on Individual Fire and Casualty Insurance; Permitted Owner Insurance. Except as provided in this Section 12.3, no Owner is permitted to separately insure his or her Lot or Residence or any Exclusive Use Common Area against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 12.1. An Owner can insure his or her personal property against loss. In addition, any improvements made by an Owner within that Owner's Lot may be separately insured by the Owner, but such insurance shall be limited to the type of coverage commonly known as "tenant improvement" and shall contain a waiver of subrogation rights by the carrier as to other Owners, and the Association. If any Owner violates the provisions of this Section 12.3, any diminution in insurance proceeds otherwise payable to the Association that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance. Such Owner will be liable to the Association to the extent of any diminution and the Association shall levy a Reimbursement Assessment against such Owner in the amount of such diminution. In all cases, the

individual Owner's insurance carrier shall have the primary responsibility for any loss or claim before the Association's insurance coverage takes effect.

- 12.4 Insurance to Be Maintained By Owner. Each Owner shall be responsible for procuring and maintaining insurance on the contents of the Residence and insurance on improvements within the Lot subject to the limitations set forth in Section 12.3.
- 12.5 Coverage Not Available. In the event any insurance policy or any endorsement required by Section 12.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage, as specified in the Bylaws.
- 12.6 Copies of Policies. Copies of all insurance policies (or certificates thereof showing that premiums have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.
- 12.7 Insurance Claims' Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 12.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured. All claims under any policy of insurance maintained by the Association pursuant to Section 12.1 must go through the Board unless otherwise provided by the Board. The Board shall adopt such procedures as it shall deem prudent for the making and adjustment of claims and for receiving and disbursing insurance settlement proceeds.
- 12.8 Premiums; Deductibles. The premiums for any insurance obtained by the Association shall be a common expense of the Association and shall be paid for out of the operating fund of the Association. The amount of any deductible relating to any insurance obtained by the Association shall be borne by the Owner or Owners of any property affected by any loss covered by such insurance.

- 13.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no building, fence, wall, hedge or other similar barriers (whether of living or inert materials), obstruction, screen, tent, awning, improvement or other structure of any kind, no outdoor lighting, no mast, pole, antenna, receiver or transmitter to the extent restricted by Section 6.12, and no landscaping shall be commenced, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Board as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation.
- 13.2 Architectural Committee. The Board may appoint an Architectural Committee consisting of three (3) Members of the Association. If an Architectural Committee is appointed by the Board that Committee shall review all proposals and requests for approval submitted in accordance with Section 13.1 and provide recommendations to the Board concerning those proposals and requests for approval. The Board has the authority to accept, modify or reject the Committee's recommendations and shall make the final decision on all proposals and requests for approval. The Architectural Committee shall also have such other duties and responsibilities as may be assigned by the Board. In the absence of a duly-constituted Architectural Committee the Board shall perform the functions of that Committee.
- 13.3 Rules. Subject to the requirements of *Civil Code* section 1357.100 *et seq.*, the Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Architectural Rules shall set forth the standards and procedures for Board review and guidelines for architectural design, placement of buildings and other structures, outdoor lighting, landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that Architectural Rules shall not be in derogation of the minimum standards required by the Declaration.

- 13.4 Written Request for Board Approval. Any Owner proposing to perform any work that requires prior approval pursuant to this Article 13, shall submit to the Architectural Committee or if no such Committee exists, to the Board, a written request setting forth the nature of the proposed work and furnishing such information and documentation as the Architectural Committee or the Board may require.
- 13.5 Decisions To Be Made in Good Faith. An Owner's request for approval which has been reviewed by the Architectural Committee (if such Committee exists) shall be considered by the Board in an open Board meeting. The Owner and, in the Board's discretion, other interested persons may present information relevant to the requested approval. The Board's decision shall be made in good faith and shall not be unreasonable, arbitrary, or capricious. The Board shall grant the requested approval only if:
- (a) The Owner has submitted a complete application;
  - (b) The Board finds that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and
  - (c) The Board determines that the proposed improvements would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.
- 13.6 Decisions In Writing. All approvals and rejections of requests for approval shall be in writing and shall be issued by the Board within sixty (60) days from the date of submission of a complete application to the Board. If a request is rejected, the decision shall include an explanation of the Board's decision.
- 13.7 Board Failure to Act; Internal Dispute Resolution. If the Board shall fail to act on a request for approval within the time specified in Section 13.6, the Owner shall be entitled to invoke internal dispute resolution pursuant to *Civil Code* section 1363.840 (see Section 14.16 below).



- 13.8 Commencement of Approved Work. Upon receipt of written approval, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all approved work pursuant to such approval, such commencement to occur, in all cases, within ninety (90) days from the date of such approval.
- 13.9 Completion. The Owner shall, in any event, complete all approved work within one (1) year after commencement thereof, except that the date for completion may be extended as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents, provided the Owner notifies the Board of such occurrence within a reasonable time after becoming aware of it. If an Owner fails to comply with this Section 13.9, the Board shall proceed in accordance with the provisions of Section 13.11, below, as though the failure to complete the improvements were a non-compliance with approved plans.
- 13.10 Inspection of Completed Work. Upon the completion of any work for which approval is required under this Article 13, the Owner shall give written notice thereof to the Board. Within sixty (60) days after receiving notice of completion from the Owner, the Board or its duly authorized representative may inspect such work to determine if it substantially complies with the granted approval. If the Board fails to notify the Owner of any non-conformity within such sixty (60) day period, the work shall be deemed to be in accordance with the granted approval.
- 13.11 Notice of Non-Conformity. If the Board finds that the work was not done in substantial conformity with the granted approval, it shall notify the Owner in writing before the end of such sixty (60) day period, specifying particulars of non-conformity and requiring the Owner to remedy the same.
- 13.12 Failure to Remedy Non-Conformity. If the Owner shall have failed to remedy such non-conformity within thirty (30) days from the date of the notice from the Board, the Board shall then, pursuant to the procedures set forth in Section 14.12, set a date on which a hearing before the Board shall be held regarding the alleged non-conformity. If the Board finds at such hearing that a substantial non-conformity exists and orders the Owner to remedy or remove such non-conformity, and the Owner thereafter fails to

do so within the time specified by the Board, the Board may, in addition to any other remedy, remove or remedy the non-conformity and, in that event, all expenses incurred by the Association in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

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

13.14 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by an Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate certifying, with respect to specified improvements and other work performed by the requesting Owner upon a particular Lot owned by such Owner, that as of the date of the estoppel certificate, either: (i) the improvements and other work specified by the Owner and performed by the Owner are not in violation of the architectural approval requirements of this Declaration, or (ii) that certain or all of the specified improvements or other work are in violation of the architectural approval requirements, in which event the estoppel certificate shall identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through the Owner, shall be entitled to rely on the recorded estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and the Owner(s) and any persons deriving any interest through the Owner(s).

13.15 Liability. Neither the Board nor any member thereof shall be liable to the Association, to any Owner, or to any person deriving an interest through an Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 13.14 whether or not the facts

therein are correct, provided the Board or such member has acted in good faith on the basis of such information as may be possessed by the Board or such member. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.

- 13.16 Compliance With Governmental Requirements. The Owner of each Lot is solely responsible for complying with any applicable building permit process or other governmental requirements with respect to any work done upon the Lot. Submission of a request for approval by the Board and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, not shall it constitute the assumption of any liability by or impose any liability on the Board, the Architectural Committee, or their members as to the accuracy, efficacy, or sufficiency thereof.

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#### **ARTICLE 14                      ENFORCEMENT; NOTICE; HEARINGS**

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- 14.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole. Notwithstanding the preceding sentence and without limiting the generality of the proviso therein, nothing in the Governing Documents shall be deemed to impose upon the Association, the Board, or the officers, employees, or agents of the Association a duty to intervene in any physical dispute or altercation or any criminal or alleged criminal activity other than to notify law enforcement officials.

- 14.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 14.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, Contract Purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several. The foregoing provisions of this Section 14.3 are in addition to and shall not limit the generality of the provisions of Subsection 6.13.3 (concerning pets), Section 7.5 (concerning rentals), and Section 13.15 (concerning architectural approval).
- 14.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.
- 14.5 Enforcement Rights Are Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.
- 14.6 Injunctions. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 9 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or

Board of Directors, or by any Owner or by their respective successors in interest.

14.7 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration and except to the extent of the Association's rights pursuant to Section 9.16 (concerning assignment of rents). The provisions of this Section 14.7 shall not affect the Association's right to impose other sanctions including imposing Enforcement Assessments.

14.8 Imposing Sanctions. Upon an explicit finding and for reasons specified by the Board following a hearing conducted in accordance with this Article 14, the Board shall have the power to impose sanctions on a Member who is in default in the payment of any Assessment or Additional Charge levied by the Board or is found to be in violation of any provision of the Governing Documents. Sanctions may include loss of good standing, suspension of other rights, and/or monetary penalties (fines), as described below.

14.8.1 Loss of Good Standing. The Board may suspend a Member's Good Standing for so long as the Member remains in default of such payment or until the violation is remedied. When a Member is not in Good Standing, his or her Association voting rights shall be suspended and the Member shall be disqualified from serving on the Board.

14.8.2 Suspension of Other Rights. The Board may suspend a Member's or a Resident's right to use Common Area recreational facilities for so long as a Member remains in default of such payment, or for such period as may be specified by the Board if the violation involves

misbehavior related to Common Area recreational facilities.

14.8.3 Monetary Penalties. The Board may impose monetary penalties or fines as Enforcement Assessments in accordance with a schedule adopted by the Board and distributed to the Members.

14.8.4 Reimbursement Assessment Not a Sanction. The imposition of a Reimbursement Assessment pursuant to the Declaration does not constitute and shall not be deemed to be a sanction.

14.8.5 Monthly Sanctions For Continued Violations. In the case of a continuing violation, such as an uncorrected architectural violation, where an Owner fails to remedy the violation after notice from the Board to do so, the Board may impose separate and successive sanctions, including monetary penalties, not more frequently than once every 30 days, provided the Board conducts a separate hearing before imposing each successive sanction. The Board may limit the scope of such hearing to facts and circumstances occurring subsequent to the previous hearing relating to the subject continuing violation.

14.9 Investigation of Complaints. Upon receipt of a written complaint from an Owner or a Resident, the Board shall conduct an investigation of the allegations in the complaint and shall make relevant findings upon which the Board shall base a decision to pursue or not pursue the matter. If the Board decides not to pursue a matter it shall notify the complaining party in writing stating the reason(s) for its decision.

14.10 Written Notice of Violation. If the Board determines, whether on its own initiative or pursuant to a written complaint, that a violation of the Governing Documents exists or has occurred, it shall notify the responsible Owner(s) by written notice in compliance with Section 14.11.

14.11 Notices: Content, Delivery. Any notices required or given under this Article 14 shall be in writing and shall, at a minimum, comply with any applicable statutes as to content and as to time and method of service. If no specific statutory requirements apply,

any notice given by the Association to a Member shall, at a minimum, set forth a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and, if applicable, a statement that the Member may request a hearing by the Board; the date, time, and location of any hearing called by the Board, and any sanction, disciplinary action, or other enforcement action being contemplated by the Board. If no specific statutory requirements apply, any notice may be given by any method reasonably calculated to give actual notice to the affected Member or the Association, as the case may be; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid and, if given by the Association to a Member, it shall be sent to the most recent address for the affected Member as shown on the records of the Association.

- 14.12 Hearings Called By the Board: Executive Session; Open Meeting. Whenever the Board determines to conduct a hearing, it shall notify the affected Owner(s) at least ten (10) days before the Board meeting at which the matter will be considered. If the matter concerns Member discipline or the imposition of sanctions, the Board shall meet in executive session if requested by the Member, unless (and then only to the extent) applicable law requires that certain actions by the Board be conducted at an open meeting of the Board, such as *Civil Code* section 1367.1(c)(2) concerning a decision to record a lien for delinquent Assessments. If the matter concerns compliance with architectural approval requirements, the hearing shall be conducted in open meeting pursuant to *Civil Code* section 1378(a)(5). In the Board's discretion, other interested person(s) may attend a hearing and may present information relevant to the subject matter of the hearing. If a notified Owner fails to attend a noticed hearing, the Board may nevertheless conduct its deliberations and make a determination based on its own investigation and any other information supplied to it that the Board deems reasonably reliable.
- 14.13 Owner Request for Hearing. An Owner who has received a notice of violation sent pursuant to Section 14.10 or a notice of corrective action pursuant to Section 14.15 or as otherwise provided in the Governing Documents may request a hearing before the Board by submitting a written request to the Board. If the Owner is requesting a hearing concerning a notice of violation

sent pursuant to Section 14.10 or a notice of corrective action sent pursuant to Section 14.15, the request for hearing must be submitted within ten (10) days after the date of such notice. The Board shall schedule a hearing at its next regular meeting that is at least five (5) days after its receipt of an Owner's request for hearing or, in the Board's discretion, at another time agreed by the Board and the Owner. Hearings shall be conducted in executive session or at an open meeting as provided in Section 14.12.

14.14 Notice of Hearing Decisions. Within fifteen (15) days after a hearing is conducted, the Board shall notify the Member in writing as to its decision. If the Board decides to impose sanctions, the notice shall describe the sanctions imposed and, if applicable, their effective dates.

14.15 Enforcement by Association in Emergency Situations.

14.15.1 Definition of Emergency Situation. For purposes of this Section 14.15, the following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, and (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations).

14.15.2 Immediate Corrective Action. Notwithstanding any other provisions of the Governing Documents, under circumstances that constitute an emergency, the Board or its duly authorized agents may undertake immediate corrective action. The Board shall promptly thereafter send written notice of the corrective action to the affected Owner including notice of any Reimbursement Assessment assessed to the Owner for costs incurred by the Association in connection therewith. If the Owner requests a hearing pursuant to Section 14.13, enforcement



of any Reimbursement Assessment imposed by the Board shall be held in abeyance and shall be pursued only if affirmed by the Board at the hearing.

14.16 Internal Dispute Resolution.

- 14.16.1 Fair, Reasonable, and Expeditious Procedure. The provisions of Article 13 (concerning architectural approval) and of Sections 14.9 through 14.15 are intended to provide a fair, reasonable, and expeditious procedure for resolving disputes between the Association and a Member and a Member that is subject to *Civil Code* section 1363.810 (which applies to, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents). The above-referenced provisions of the declaration shall constitute the Association's "internal dispute resolution" process as required by *Civil Code* section 1363.820.
- 14.16.2 Statutory Default Procedures. If the Association shall fail to comply with the Association's internal dispute resolution process, then the Association and the affected Member shall abide by the statutory default procedures provided in *Civil Code* section 1363.840, or successor statute. Any resolution so agreed upon by the parties thereto, that is not in conflict with the law or the Governing Documents, shall bind the parties and shall be judicially enforceable as provided in *Civil Code* section 1363.830.
- 14.16.3 Alternative Dispute Resolution May Also Apply. If (a) the subject matter of the dispute (including, among other things, enforcement of applicable provisions of the *Corporations Code* and enforcement of the Governing Documents) and the remedy sought (including certain kinds of declaratory, injunctive, or writ relief, which may be in conjunction with certain limited monetary relief, but excluding small claims actions and

excluding Assessment disputes) are subject to *Civil Code* section 1369.510 *et seq.* and (b) the Association and the affected Member do not agree on a resolution through the foregoing internal dispute resolution process provided for in Subsection 14.16.1, no party to the dispute may pursue a civil remedy that is subject to *Civil Code* section 1369.510 *et seq.*, without first complying with the "alternative dispute resolution" procedures set forth in that statute and referenced in Section 14.17.

14.16.4      Annual Description of Internal Dispute Resolution Process. The Association shall annually provide the Members with a description of the internal dispute resolution process as part of the notice required by *Civil Code* section 1369.590.

14.17      Alternative Dispute Resolution Before Initiating Lawsuit.

14.17.1      When ADR Applies. This section applies to civil action or proceedings as defined in *Civil Code* section 1369.510(b) when the remedy sought is solely for declaratory, injunctive, or writ relief or if for the foregoing relief in conjunction with monetary damages not in excess of \$5,000, as provided in *Civil Code* section 1369.520(b). *Civil Code* section 1369.510 *et seq.* Applies to disputes between Members as well as to disputes between the Association and a Member. The ADR requirements of this Section 14.17 do not apply to Assessment disputes or to an action in small claims court.

14.17.2      Statutory ADR Process. In accordance with *Civil Code* section 1369.510 *et seq.*, the Association, or an Owner or a Member may not file an "enforcement action" as defined in the statute unless the parties have endeavored to submit their dispute to "alternative dispute resolution" as the term is defined in *Civil Code* section 1369.510(a) and as the process is specified in *Civil Code* sections 1369.530, 1369.540, and 1369.550.

14.17.3 Annual Summary of Alternative Dispute Resolution Process. In accordance with *Civil Code* section 1369.590, the Association shall annually provide the Members with a summary of the provisions of *Civil Code* section 1369.510 *et seq.* including the statement specified in *Civil Code* section 1369.590(a), and including a description of the Association's internal dispute resolution process as required by *Civil Code* section 1363.850.

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

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

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## ARTICLE 15                      AMENDMENT

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15.1 Required Member Approval. This Declaration may be amended by the affirmative vote or written consent of Members representing at least a majority of the Total Voting Power of the Association.

15.2 Amendments Must Be Recorded. Any amendment of the Declaration shall be signed and acknowledged by the duly

authorized officer(s) of the Association and recorded in the Office of the Contra Costa County Recorder.

## **ARTICLE 16 GENERAL PROVISIONS**

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- 16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 16.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 16.4 Amendment to Referenced Statutes; Time for Performance. References in the Declaration to particular statutes, including sections of the *Civil Code* or the *Corporations Code*, shall be deemed to include any successor statute and any amendments to existing or successor statutes. Whenever this Declaration states a time for the performance of any act by the Association which by law (as it may exist from time to time) must be performed at or within a specified time, the time for the performance of such act shall be deemed to be the widest timeframe permitted under then-applicable law.
- 16.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 16.6 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.
- 16.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power

of attorney coupled with an interest is granted to the Association by the Owners and each of them.

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

IN WITNESS WHEREOF, we, the Members of Bancroft Village Homeowners Association, constituting the record owners of at least fifty-one percent (51%) of the Lots in the Development, hereby affirm, approve, and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of BANCROFT VILLAGE HOMEOWNERS ASSOCIATION, in accordance with Article XIII, Section 3 of the 1993 Declaration, by means of the signatures of the President and Secretary of Bancroft Village Homeowners Association, duly authorized by written consent of the record owners of least fifty-one percent (51%) of the Lots in the Development, which Amended and Restated Declaration of Covenants, Conditions and Restrictions of Bancroft Village Homeowners Association shall be recorded in the Office of the County Recorder of Contra Costa County, California.

DATED: October 11, 2006

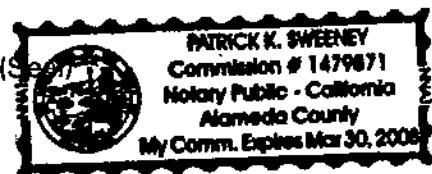
BANCROFT VILLAGE  
HOMEOWNERS ASSOCIATION

\_\_\_\_\_  
M. Robert Dameron, President

\_\_\_\_\_  
Margorie M. Weldon, Secretary

STATE OF CALIFORNIA )  
 ) ss. )  
COUNTY OF Contra Costa )

WITNESS my hand and official seal.



**Signature**

Patricia K. Long

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

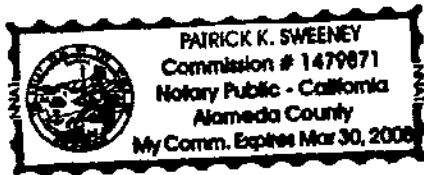
County of Contra Costa } ss.

On 11/1/2006 before me, Patrick K. Sweeney M.P.  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Margorie M. Weldon  
Name(s) of Signer(s)

☐ personally known to me  
☒ proved to me on the basis of satisfactory evidence

to be the person whose name 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.

Patrick K. Sweeney  
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: \_\_\_\_\_

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

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

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

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

Signer Is Representing: \_\_\_\_\_

