



Los Verdes Estates

HOMEOWNERS ASSOCIATION

1102 LOS VERDES AVE • MERCED, CA 95348

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FAHRENS PARK - LOS VERDES ASSOCIATION A California nonprofit mutual-benefit corporation

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

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FAHRENS PARK – LOS VERDES ASSOCIATION
a California nonprofit mutual-benefit corporation

THIS RESTATED Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) is made by all persons who own Lots in that certain real property planned residential development known as Fahrens Park – Los Verdes Association located in Merced County, California. These CC&Rs shall apply to and bind all properties previously covered by covenants, conditions and restrictions. Without reducing the number of properties covered by these CC&Rs, the CC&Rs shall apply to certain property located in the City of Merced, County of Merced, State of California, more particularly described as:

All that land embraced within the boundaries for the subdivision shown on the Map entitled “Los Verdes Home Owners’ Association”, which Map was filed for record in the office of the Recorder of the County of Merced, State of California, on May 17, 1990 in Volume 67 of Parcel Maps at Page 25, and all that land embraced within the boundaries for the subdivision shown on the Map entitled “Amended Map of Los Verdes”, which Map was filed for record in the office of the Recorder of the County of Merced, State of California on June 5, 1979, in Book 25 of Maps, at Pages 38 and 39.

By this instrument, the Members of the Association hereby revoke all previous declarations of covenants, conditions and restrictions recorded on June 5, 1979 as Recorder’s Document No. 15404, as well as all amendments thereto and substitute in their place these CC&Rs, which shall:

1. *Benefit Members.* Be for the benefit of Members of the Association;
2. *Benefit the Development.* Be for the benefit, enhancement and protection of the desirability, value and attractiveness of the Development and each Lot therein;
3. *Bind Successors in Interest.* Inure to the benefit of and be binding upon each successor in interest of the Association, each Member, Tenant, Resident, and occupant of any portion of the Development, as well as their respective heirs, personal representatives, grantees, Tenants, licensees, successors and assigns; and
4. *Run With the Land.* Run with the land and be binding upon all parties having or acquiring any right, title or interest in the Development or any portion of the Development, whether as sole owners, joint owners, Tenants, Residents, occupants or otherwise.

NOW THEREFORE, all Lots in the Development, as well as any conveyance, transfer, sale, assignment, rental, lease or sublease of a Lot, shall be deemed to incorporate the provisions of these CC&Rs. Each successor in interest is subject to all of the covenants, conditions and restrictions contained in these CC&Rs.

ARTICLE 1: DEFINITIONS

1.1 “Annual Meeting” means the annual meeting of the Members of the Association.

1.2 “Architectural Standards” means those rules and guidelines which govern the making of physical changes, alterations, repairs or improvements to Lots and Common Areas.

1.3 “Articles” means the Association’s Articles of Incorporation.

1.4 “Assessment” means any Regular Assessment, Special Assessment, Reimbursement Special Assessment, or any other assessment levied, imposed, or assessed against a Member’s Lot in accordance with the provisions of the Governing Documents or applicable law.

1.5 “Association” means the Fahrens Park – Los Verdes Association, a California nonprofit mutual-benefit corporation. The Association shall include, when the context requires, its Officers, Directors, employees and agents.

1.6 “Balcony” shall refer to a balcony which is attached to a Lot and accessible through the Lot of which it is a part.

1.7 “Board” and “Board of Directors” means the Board of Directors of the Association.

1.8 “Budget” means a pro forma, projected or estimated operating budget of the Association’s income and expenses for a twelve (12) month period.

1.9 “Bylaws” means the duly adopted Bylaws of the Association, including any amendments.

1.10 “CC&Rs” means this Restated Declaration of Covenants, Conditions and Restrictions and any amendments to these CC&Rs.

1.11 “Committee” means any committee appointed by the Board to assist in the management and administration of the affairs of the Association.

1.12 “Common Area” means the entire Development, except the Separate Interests owned by Members. If no Common Area improvements exist, the Common Area shall mean the mutual and reciprocal easement rights appurtenant to Members’ Separate Interests.

1.13 “Common Expenses” means the costs, expenses and charges in connection with maintaining, managing, insuring, operating, repairing, improving or replacing the Common Areas or managing the affairs of the Association. Common Expenses include, but are not limited to, those amounts reasonably necessary for Reserves.

1.14 “Development” means that certain residential development known as “Los Verdes Estates” whose mailing address is 1102 Los Verdes Avenue, Merced, CA 95348.

1.15 “Director” means any member of the Association’s Board of Directors.

1.16 “Governing Documents” means these CC&Rs and any other documents which govern the operation of the Association, including, but not limited to, the Articles of Incorporation, Bylaws, Architectural Standards, Rules and Regulations, and Election Rules, as may be amended from time to time.

1.17 “Improvements” means all buildings and other structures located within the Development, including, but not limited to, streets, sidewalks, and utilities.

1.18 “Lender” means the holder of a first mortgage or deed of trust given by a Member (or his predecessor in interest), the lien of which mortgage or deed of trust is superior to all other monetary encumbrances, except real property taxes and assessments.

1.19 “Lot” means any real property such as lots, sublots, or parcels in the Development subject to these CC&Rs.

1.20 “Manager” means any Person or company employed or retained by the Association to oversee the operation, maintenance and management of the Association.

1.21 “Member” means the Owner, whether one or more Persons, of the publicly-recorded fee title to any Lot within the Development, but excluding any Person or Persons having such an interest in the Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the record fee ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise separated in any way, except in connection with the record sale of a fee interest of the Lot to which it is appurtenant. Where the CC&Rs impose restrictions on Member, the restriction shall also apply to Member’s Tenants, and Member’s and Tenant’s family, guests and invitees.

1.22 “Membership Approval” and “Approval of the Membership” means approval by the affirmative vote of a majority of those Members present and voting at a duly held meeting at which a Quorum is present as defined in the Bylaws, unless provided otherwise in the Bylaws or these CC&Rs.

1.23 “Mortgage” means a deed of trust.

1.24 “Mortgagee” shall refer to a beneficiary (or its assignee) under a deed of trust and the term “First Mortgagee” shall refer to a beneficiary (or its assignee) under a deed of trust with priority over all other Mortgagees and deeds of trust.

1.25 “Officer” means the president, vice-president, secretary, treasurer, and any other officer of the Association, as defined in the Bylaws.

1.26 “Operating Accounts” means any account into which the Association’s Assessments are deposited and out of which the Association’s operational expenses are paid.

1.27 “Owner” means the owner, whether one or more Persons, of the publicly-recorded fee title to any Lot within the Development, but excluding any Person or Persons having such an interest in the Lot merely as security for the performance of an obligation.

1.28 “Percentage Interest” means that undivided percentage ownership of the Common Area assigned to each Lot.

1.29 “Person” means a natural person, corporation, partnership, trust, association, or other entity, as recognized by law.

1.30 “Quorum” means at least twenty-five (25%) of the Voting Power of the Association, unless provided otherwise in these CC&Rs or Bylaws.

1.31 “Regular Assessments” means Assessments other than Special Assessments and Reimbursement Assessments, levied or imposed against Members in order to perform the Association’s obligations under the Governing Documents or the law.

1.32 “Reimbursement Special Assessments” or “Reimbursement Assessments” means those Special Assessments levied against Members for expenses incurred by the Association arising out of: (i) actions or omissions of Members, Tenants or their respective family, guests, invitees, or pets; (ii) materials or services provided to Members, Tenants or their respective family, guests, invitees, or pets; or (iii) conditions originating on a Lot.

1.33 “Reserves” or “Reserve Accounts” means those monies set aside in a separate account for anticipated long-term maintenance, repair, replacement and restoration of major Common Area components of the Development of Improvements upon the Common Areas, and any other obligations of the Association that are authorized by either the Governing Documents or law.

1.34 “Residence” means a structure used for residential purposes.

1.35 “Resident” means any Person in actual possession of all or any portion of a Lot.

1.36 “Rules and Regulations” or “Rules” means the rules and regulations adopted by the Board for the general health, welfare, comfort, and safety of Members and Tenants and their respective family, guests, or invitees and to interpret and implement the Governing Documents and for the orderly conduct of the business of the Association.

1.37 “Separate Interest” means a separately owned lot, parcel, area, or space.

1.38 “Special Assessments” means Assessments levied from time to time against Members if at any time during the fiscal year the Regular Assessments are inadequate to perform the Association’s obligations under the Governing Documents or the law, including, but not limited to, Common Area maintenance and repairs, unexpected expenses, capital improvements, and emergency repairs.

1.39 “Tenants” and “Lessees” means those Persons who have the temporary use and occupancy of Lots owned by others, whether such use is paid for in money or other value.

1.40 “Utility Lines” means sewer lines, storm drains, water pipes, electricity lines, gas lines, telephone lines or cables, television cables, satellite dish cables, heating and air conditioning conduits, heating and air conditioning ducts, heating and air conditioning flues, fiber optic cables, data lines, and other similar lines, pipes, cables, ducts, flues, and conduit pipes.

1.41 “Voting Power” means the total number of Lots entitled to vote, excluding those Lots for which voting rights have been properly suspended.

1.42 Definitions of Other Terms. Unless the context clearly requires otherwise, all other terms are defined in the Davis-Stirling Act.

ARTICLE 2: MEMBERSHIP RIGHTS AND PRIVILEGES

2.1 Prohibition Against Severance. Members shall not have the right to sever their Lots from their membership rights or from their interest in the Common Areas.

2.2 Membership. Each Person shall automatically become a Member of the Association upon obtaining a publicly-recorded fee title ownership interest in a Lot and shall remain a Member until he or she ceases to have such recorded fee ownership interest in a Lot.

- a. *Membership Appurtenant to Lots.* Membership in the Association is for the benefit of and appurtenant to the Lot to which it relates and shall not be separated from the ownership of the Lot.
- b. *No Membership for Security Interests.* Membership does not include Persons who hold an interest in a Lot merely as security for the performance of an obligation.

- c. *No Membership for Tenants.* Tenants have the same rights to use the Common Areas as Members, but shall not be Members nor have the right to vote.
- d. *No Separate Transfer of Membership.* No Member may transfer, pledge, or alienate in any way his/her membership in the Association, except upon the recorded transfer of the fee interest in the Lot to which it is appurtenant and then only to the transferee of such fee interest.
- e. *Trust.* If the record fee title to a Lot is held in the name of a trustee on behalf of a trust, the trustees of the trust shall be authorized to exercise the rights and privileges of Association membership on behalf of the trust.
- f. *Corporation.* If the record fee title to a Lot is held by a corporation, the president of the corporation, as designated in the corporation's minutes, shall be authorized to exercise the rights and privileges of Association membership on behalf of the corporation.
- g. *Partnership.* If the record fee title to a Lot is held by a partnership, the managing partner, as designated in the partnership agreement, shall be authorized to exercise the rights and privileges of Association membership on behalf of the partnership. If no managing partner has been designated in the partnership agreement, then the partnership shall deliver to the Association a written designation of the name of the partner who is authorized to exercise the rights and privileges of Association membership on behalf of the partnership.
- h. *Other Entities.* If the record fee title to a Lot is held by a legal entity not described above, the majority owner of the entity shall be considered the Owner of the Lot for purposes of membership in the Association and may exercise the rights and privileges of a Member. If there is no majority owner, an owner of the legal entity shall deliver to the Association a written designation of the name of the owner who is authorized to exercise the rights and privileges of Association membership on behalf of the entity.

2.3 Proof of Ownership. Proof of membership shall be in the form of a recorded deed showing fee ownership of a Lot.

2.4 Voting Rights. In all matters submitted for a membership vote, Members shall be entitled to one (1) vote per Lot (regardless of the number of Members having an interest in the Lot), except for those Members whose voting rights have been properly suspended pursuant to the Governing Documents and applicable law.

2.5 Inspection of Records. Members shall have the right to inspect records of the Association as provided for in the Bylaws and by law.

2.6 Ingress, Egress and Support. Members shall enjoy a nonexclusive easement appurtenant to and for the benefit of their Lots for ingress, egress, and support over, across and through the Common Area.

2.7 Easement for Use and Enjoyment. Members have a nonexclusive easement of use and enjoyment of the Common Areas, subject to the rights of the Association to establish reasonable Rules regulating the use of the Common Areas and any other rights described in the Governing Documents.

2.8 Encroachment Easement. Members agree that minor encroachments of the Common Area on Lots or of Lots on the Common Area or on other Lots shall be permitted and that valid easements for the encroachments shall exist. Such encroachments shall not be considered to be encumbrances either on the Lots or the Common Area.

ARTICLE 3: MEMBERSHIP OBLIGATIONS

3.1 Obligation to Follow Governing Documents. Members, Tenants and Residents shall be obligated to follow the Association's Governing Documents and to ensure that their respective family, guests, and invitees abide by the Governing Documents.

3.2 Supervision of Minors. Members shall be liable for the conduct, behavior, and proper supervision of minors residing at or visiting their Lots and/or using the Association's Common Areas.

3.3 Security. Neither the Association nor any Officer, Director, Committee member, employee or agent of the Association shall in any way be considered insurers or guarantors of any level of security within the Development. Members shall be responsible for their own security and shall take appropriate measures to ensure their own security as well as that of their family, guests, invitees, and Tenants. Members may not rely on any security measures provided by the Association. Neither the Association, nor any Officer, Director, Committee member, employee or agent of the Association shall be liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.4 Purchase Subject to Violations. Buyers shall take ownership of Lots subject to any violations of the CC&Rs, Architectural Standards, or Rules which may exist concerning the Lot, whether or not such violations were disclosed by the seller of the Lot and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Association. Assessments, fines, and other charges not secured by a lien on the Lot prior to transfer of title are exempt from this provision.

3.5 Notice of Transfer of Ownership. No later than five (5) days after the assignment, sale, quitclaim or other transfer of their Lots, Members shall notify the Association of the name and address of the transferee and the nature of the transfer.

3.6 Duty to Maintain, Repair and Replace. Except for those duties specifically assigned to the Association by these CC&Rs, Members shall, at their sole expense, maintain and repair their Lots, maintain, repair and replace Improvements to their Lots. Members' obligations include, without limitation, the following:

- a. *Slopes.* Their slopes, terraces, drainage contours, drainage devices, and landscaping.
- b. *Improvements.* All improvements or alterations to the Lot or appurtenant areas by any current or prior Owner of the Lot, or by any party other than the Association, as part of any improvement or alteration to the Lot.
- c. *Utility Lines.* The Utility Lines that exclusively services the Lot. Each Member shall have limited easements across adjacent Lots and Common Areas for the limited purpose of installing, repairing or maintaining Utility Lines which cannot reasonably be serviced from their Lot. Access to Lots and Common Areas shall be limited to a reasonable work area and be for a reasonable time. Except in emergencies, reasonable notice and consent, which may not be unreasonably withheld, to perform such work must be obtained from the affected Lot Owner and/or the affected Association, as applicable. Immediately after the work is completed, Members shall restore Lots and the Common Areas to the same or better condition which the Lots and Common Areas were in prior to the commencement of such work. Such restoration work on the Lots and the Common Areas shall be done at the sole expense of the Member performing the installation, repair, or maintenance work and shall be completed in timely fashion.
- d. *Weeds and Rubbish.* Members shall keep their Lots free and clear of debris and rubbish (including rubbish dumped by others) and shall keep all shrubs, trees, grass and plantings of every kind neatly trimmed, watered, cultivated and free of weeds and other unsightly material.
- e. *Trash.* Members shall not keep trash on or in any portion of the Lot or the Development except as provided for in the Rules and Regulations. Members shall use only permitted trash receptacles and ensure that such receptacles are visible only on scheduled trash pick-up days in accordance with the requirements of Merced County and as provided for in the Rules and Regulations.
- f. *Paint.* Members shall prevent their Lots from becoming unsightly by reason of deterioration of paint or other materials and, in general, shall do all other things necessary or desirable to keep his property neat, clean, attractive and in good order.

- g. *Sidewalk and Street Encroachments.* Members shall ensure that no tree, shrub or planting of any kind shall be allowed to protrude from their Lot onto a sidewalk or street. Trees which overhang a pedestrian walkway or street must be kept free of limbs from the walkway or street to a height of ten (10) feet above the walkway or street.
- h. *Fences.* Unless otherwise agreed to by the affected Members, Members who have fences separating their Lots which are not maintained by the Association shall equally have the right to the use and enjoyment of the fence as well as being equally liable for maintaining the fences. Notwithstanding the foregoing, if fences are damaged due to the negligence or willful misconduct of a Member, Member's Tenant, or their respective family, guests, invitees or pets, such Member shall bear the full expense of the repair.
- i. *Insects and Plant Diseases.* No thing or condition may be permitted to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.
- j. *Tree Removal, Pruning and Topping.* Members must keep the trees on their Lots properly pruned and topped to prevent them from becoming overgrown or diseased. Individual Members and not the Association shall be responsible for any damage caused by the trees and shrubs on their Lots.
- k. *Termites and Pests.* Members shall bear the costs of any damage to his Lot caused by the presence of wood-destroying pests or organisms (including microorganisms) and shall have the duty to treat and/or repair, at Owner's expense, the areas of Member's Lot infested or damaged by such insects, rodents and wood destroying pests or organisms (including microorganisms).
- l. *Fireplaces.* All components of the fireplace located inside and outside the Residence, including flues, fireboxes, fireplace mantles, the chimney and the chimney cap.
- m. *Drainage Structures.* Members shall keep all drainage courses, ditches and swales on their Lots free and clear of all obstructions, and shall maintain all such drainage ditches, swales and culverts in good order.
 - i. *No Alteration or Obstruction.* Members shall not alter or obstruct a natural drainage course, or materially add to the natural water volume of a drainage course without making adequate provisions with respect to neighboring Lots and Common Areas. Any such alterations, obstructions or additions to water volume must have the prior written approval of the Architectural Committee.

ii. *Association*. All drainage structures, culverts and canals improved by the Association for the major collection of storm runoff and any natural drainage courses within Common Areas shall be maintained by the Association.

3.7 Obligation to Carry Insurance. Members shall purchase insurance for their separate interests, at their sole expense, as more fully described in the Article in these CC&Rs entitled “Insurance.” The Association may confirm compliance with this section but is not required to and is specifically relieved of any responsibility or liability for not confirming compliance with this section.

3.8 Liability for Damage. Members shall be liable for any and all damage to the Common Areas, Lots and any personal property when the cause of such damage originates from that Member’s Lot, or which was caused by the acts or omissions of such Member, Member’s Tenant, or their respective family, guests, invitees, or pets. The Association shall repair, restore or replace damaged Common Areas as it deems appropriate and may impose a Reimbursement Special Assessment against the liable Member and that Member’s Lot for all costs, expenses and attorney fees incurred by the Association in connection with the damage. The Reimbursement Special Assessment may become a lien against the liable Member’s Separate Interest enforceable by the sale of the Member’s Lot under Civil Code sections 2924, 2924(b), and 2924(c).

3.9 Reimbursement to Association. In the event the Association undertakes to provide materials or services that benefit a particular Member, such Member shall reimburse the Association for the costs incurred by the Association, which shall become a Reimbursement Special Assessment against the Member.

3.10 Liability for Mitigation. Members shall be liable for expenses incurred by the Association mitigating or repairing damage to Lots, Common Areas and Improvements due to damage: (i) originating from Members’ Lots, including, but not limited to, flood, fire, insect, or rodent infestation; or (ii) from the negligence or willful misconduct of such Members, Members’ Tenants or their respective family, guests, invitees, or pets. Such expenses shall become Special Assessments against such Members.

3.11 Guests. Each Member shall be accountable to the remaining Members and the Association for the conduct and behavior of Persons residing with or visiting the Member or Member’s Tenant in the Development.

3.12 Correction of Violations. Following notice and a hearing and a finding by the Association of a violation of the Governing Documents, the Association will have the right, but not the duty, to correct or cause to be corrected the violation, including entering a Lot with the permission of a Member owning the Lot, which permission will not be unreasonably withheld. All expenses incurred by the Association to correct the violation will be recovered from the Members owning the Lot as a Reimbursement Assessment following notice and a hearing. If permission for entry into the Lot is not granted, the

Association may enforce the violation by any other means allowed by the Governing Documents or the law.

ARTICLE 4: DUTIES OF THE ASSOCIATION

4.1 Board of Directors. The maintenance of the Common Areas, management of the Association, enforcement of the Governing Documents, and all other acts of the Association shall be through its Board of Directors, unless provided otherwise in the Governing Documents.

- a. *Membership Meetings*. The Association shall have at least one (1) meeting of its Members each year, as provided for in the Bylaws. Annual and Special Meetings of the membership shall be held at the dates, times, and locations provided for in the Bylaws.
- b. *Director Qualifications and Meetings*. The qualifications of who may be elected to the Board shall be as provided for in the Bylaws. Meetings of the Board shall be held as provided for in the Bylaws. Meetings of the membership shall be conducted in accordance with a recognized system of parliamentary procedure selected by the Board.

4.2 Powers of a Nonprofit Corporation. The Association shall have all of the powers of a nonprofit corporation organized under the laws of the State of California, operating for the benefit of its Members.

4.3 Maintain Common Areas. The Association shall maintain the Common Areas and Association-owned assets, except as otherwise provided in these CC&Rs.

- a. *Common Areas*. The Association shall maintain all the Common Areas including all such land as designated on the Tract Map and referred to as parkway, landscaping, ground cover, trees, bushes, flower beds, irrigation equipment, perimeter fences, gates and related facilities. The Association shall have the right to enter upon the portion of any Lot in the Development located within ten (10) feet of any Common Area property line for the purposes of maintaining any portion of the Common Area. Except for in an emergency where a hazardous condition exists, Members shall be given at least seventy-two (72) hours written notice informing them of the reason for the request. Requests shall not be unreasonably denied. In the event it exercises its right of entry subject to the provisions of this section, neither the Association nor those acting at its direction shall be deemed guilty of any manner of trespass.
- b. *Common Area Fences*. The Association shall maintain all Common Area fences including perimeter fences and gates. Members shall not interfere with the Association's maintenance of its fences. Members shall keep those portions of their Lots under and around fences in a clean and neat condition, including the removal of all weeds. Members

must remove other vegetation and materials from around the fences when so requested by the Association.

- c. *Vacant or Unimproved Lots.* The Association shall have the right at all times to enter upon any vacant or unimproved Lot in the Development to plant or replant, trim, cut back, remove, replace or maintain hedges, trees, shrubs, or flowers on the front half of such Lots or on the area within fifteen (15) feet of any rear line, or within ten (10) feet of any side lines. Neither the Association nor those acting at its direction shall be deemed guilty of any manner of trespass.
- d. *Buildings and Equipment.* All portions of the buildings and equipment owned by the Association.

4.4 Termites and Pests. In addition to any authority provided for in the Davis-Stirling Act, the Board shall have the authority and the duty to: (i) treat and/or repair Common Areas infested or damaged by insects, rodents, and wood destroying pests or organisms (including microorganisms); and (ii) impose a Special Assessment against the membership for the cost of the treatment and/or repairs. Each Owner of a Lot shall bear the costs of any damage to his Lot caused by the presence of wood-destroying pests or organisms (including microorganisms). Each Owner shall have the duty to treat and/or repair, at Owner's expense, the areas of Owner's Lot infested or damaged by insects, rodents and wood destroying pests or organisms (including microorganisms).

4.5 Incur and Pay Expenses. The Association shall have the power to incur and pay the operational expenses of the Association, which shall include but not be limited to, legal and accounting services; utilities; insurance; management services; vendor services, such as security, landscaping, garbage collection, pest control, street sweeping, cleaning, painting, and other such services; maintenance, repair, reconstruction, and replacement of all or any portion of the Common Areas or the personal property acquired by the Association; supplies and materials; and such other services for the use, enjoyment and protection of the Development and its Residents as the Board may determine from time to time are reasonable, proper, or desirable.

4.6 Rules and Regulations. The Board may adopt, amend, and repeal Rules and Regulations regarding any matter set forth in the Governing Documents, including, but not limited to: (i) the use, occupancy, and maintenance of the Development; (ii) the general health, welfare, comfort, and safety of Residents in the Development; and (iii) the interpretation and implementation of the Governing Documents.

4.7 Foreclose, Hold Title and Make Conveyances. The Association shall have the authority to lien and foreclose upon any Lot for non-payment of Assessments, to take title to the Lot, to assume or otherwise pay off encumbrances, and to acquire, hold title to, lease and convey, with or without consideration, real and personal property and interests.

4.8 Fee Limitation. The Association may not impose fees that exceed the amount necessary to defray the costs for which the fee is levied.

4.9 Commercial Concessions. The Board may negotiate contracts and grant commercial concessions over portions of the Common Area, subject to Membership Approval.

4.10 Utility and Cable Easements. The Association is granted easements to enter onto Lots as is necessary or prudent to: (i) install, repair, and maintain Common Area utility lines; and (ii) install, operate, and maintain transmission lines and other facilities for a community television system, high-speed internet lines, community security systems, or other similar systems; provided that any damage to a Member's Lot shall be repaired at the Association's expense and in a timely fashion to current building construction standards.

4.11 Granting Utility Easements. The Board may grant and convey easements and rights of way for utilities such as wires, conduits, piping, plumbing, water lines, telephone lines, power lines, cable, storm drains, sewer lines, gas lines, and the like. The Board may, with Membership approval, grant and convey easements, rights of way, parcels or strips of land in, on, over or under any Private Street or Common Area for the purpose of constructing, erecting, operating or maintaining roads, streets, walkways, parkways and park areas.

4.12 Limitation on Granting Easements. Granting any Member an easement for exclusive use of any portion of the Common Areas requires Approval of the Membership, as provided for in the Davis-Stirling Act.

4.13 Borrow Money. The Association may borrow and repay monies, as needed in connection with the discharge of its duties, and pledge or assign Special Assessment rights, as security for the repayment of such borrowed money. However, any loan in excess of five percent (5%) of the annual Assessments shall require Membership Approval.

4.14 No Power to Encumber Real Property. The real property assets of the Association may not be encumbered as a security for debt.

4.15 Represent Association in Litigation. On behalf of the Association, the Board may institute, defend, settle, or intervene in litigation, arbitration, mediation, administrative proceedings, or any other legal proceeding in any capacity necessary to represent the interests of the Association.

4.16 Receive Property. The Board may receive property on behalf of the Association.

4.17 Limitations on Sale of Property. The Board may not sell during any fiscal year property owned by the Association having an aggregate market value in excess of five percent (5%) of the Association's budgeted gross expenses for that year, without Membership Approval, provided however that this limitation shall not apply to the sale or other disposition of property acquired by the Association in foreclosure proceedings.

4.18 Capital Improvements. The following applies to Common Area capital improvements:

- a. *Defined*. “Capital Improvement” means any substantial discretionary addition to the Common Areas or significant alterations to the appearance of the Development. A Capital Improvement is not defined to mean additions or upgrades to Common Area materials which are necessary or prudent to comply with building or safety codes, or to prevent property damage or personal injury, or to reduce operating or maintenance costs for the Common Areas or to comply with Reserve component repairs or replacements.
- b. *5% Limitation*. Capital Improvements may not be made to the Common Areas in any fiscal year in excess of five percent (5%) of the Association’s budgeted gross expenses for that year, without Membership Approval.
- c. *Obsolescence*. In the event the Board determines that any Common Area amenity is obsolete and the cost to remove the amenity is more than 5% of the Budget, the Board may call for a vote of the Members to determine whether the amenity should be removed. Any such removal shall require Membership Approval.

4.19 Vendor Contract Limitations. Except for the contracts listed below, no contract for services shall be entered into which binds the Association for a period in excess of two (2) years, without Membership Approval.

- a. *Public Utility Contract*. A contract with a public utility company, if the rates charged for the materials or services are regulated by the Public Utilities Commission. However, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.
- b. *Fire and Burglary*. Contracts for terms up to three (3) years to lease or service burglar and/or fire alarm equipment or provide protective services.
- c. *Insurance*. Contracts for insurance, if the policies do not exceed three (3) years duration.

4.20 Delegation to Manager. The Board may delegate any of its duties, powers, or functions to any qualified Person or management company to act as Manager, except (i) attending Board meetings and voting on motions; (ii) electing officers; (iii) filling vacancies on the Board; (iv) appointment executive committees; and (v) approving settlement agreements. Notwithstanding any delegation of duties, however, the Manager shall act at the direction and supervision of the Board.

4.21 Transfer to Public Agency. The Association may, upon Membership Approval, dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association.

4.22 Real Property Exchange. Upon Membership Approval, the Association may transfer any part of the Common Area to other Persons or entities in exchange for real property of equal or greater value.

4.23 Personal Property of Association. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

4.24 Nonprofit Character of Association. Notwithstanding anything contained in these CC&Rs to the contrary, the Association may not engage in any activity which may jeopardize the nonprofit character of the Association.

4.25 Discharge of Liens. If necessary, the Association shall have the power to discharge by payment any lien against the Common Area and assess the cost thereof to the Member or Members responsible for the existence of the lien. Prior to any Board decision to discharge a lien, the Member or Members responsible for the existence of the lien shall be given written notice and an opportunity for a hearing before the Board to present any defenses which may exist.

ARTICLE 5: ARCHITECTURAL CONTROL

5.1 No Improvements or Alterations Without Approval. No Improvement, excavation, landscaping, hardscaping, fence, wall, swimming pool, painting, alteration or other work which alters the exterior appearance of any Lot or its Improvements shall be commenced until plans and specifications have been submitted to and approved in writing by the Architectural Committee. If Improvements, additions, alterations, or modifications are different from those approved by the Architectural Committee, such improvements, additions, alterations, or modifications shall be deemed disapproved and the Member shall promptly correct the nonconforming items to comply with the Architectural Standards, the Architectural Committee's approvals, and City Requirements.

5.2 No Exterior Installations. Installations of any kind, including but not limited to, electric lines, telephone lines, television antennas, machines, or air conditioning units shall not be commenced until plans and specifications have been submitted to and approved in writing by the Architectural Committee.

5.3 Applicants in Good Standing. Only Members in Good Standing may submit requests for approval of improvements, additions, alterations or modifications to their Lots. "Good Standing" is defined to mean Members who are not delinquent by more than sixty (60) days in the payment of any Assessment, fee, or fine, and not found to be in violation of the Association's Governing Documents (following proper notice, hearing, and a finding by the Board).

5.4 Right to Decorate Residence. Members shall have the right to decorate the interior surfaces of the walls, partitions, ceilings, floors, and doors within their Residence, subject to any restrictions or procedures found in these CC&Rs and any Rules established by the Association.

5.5 Architectural Standards. The Board may adopt, amend, and repeal Architectural Standards. These Architectural Standards shall interpret and implement the provisions of these CC&Rs by setting forth the standards and procedures for the review and approval of proposed modifications, guidelines for architectural design, placement of any modification, color schemes, exterior finishes and materials, and similar features which are recommended for use within the Development, provided that the Architectural Standards shall meet the minimum standards required by these CC&Rs. In the event of any conflict between the Architectural Standards and these CC&Rs, the CC&Rs shall prevail.

5.6 Architectural Committee. The Board shall appoint an Architectural Committee. If the Board does not appoint one, the Board shall automatically be deemed the Architectural Committee. The Architectural Committee shall have the authority to approve, reject, modify, give conditional approvals, and give limited approvals of improvements and alterations as provided for in the Association's Architectural Standards.

- a. *Architect.* The Board may retain the services of an architect and one or more consultants to assist the Architectural Committee in its duties. Compensation for consultants' services shall be fixed by the Board. The cost of such consultants and any related expenses may be charged to those Members submitting plans for alterations and/or improvements to their Lots. Any significant costs must be submitted to the Member for approval before incurred by the Association.
- b. *Conflicts of Interest.* No Director or Architectural Committee member may participate in the decision-making process of any architectural submittal made by that Director or Architectural Committee member or members of their family. Further, no Director or Architectural Committee member may participate in the decision-making process of any other architectural submittal if it results in a monetary benefit to the Director or Architectural Committee member or any company in which they or members of their family have a financial interest.

5.7 Rescinding Approval. The Architectural Committee and/or the Board shall have the authority to rescind approval of plans previously approved by the Association if they believe that there is good reason to rescind such approval.

5.8 Submission of Plans. Plans and specifications in accordance with the Association's Governing Documents, describing the proposed modification, shall be submitted to the Architectural Committee by personal delivery or certified mail. Unless a delay in approval by the Architectural Committee is the result of (i) the applicant's failure

to properly submit an application in accordance with the Association's guidelines, or (ii) a reasonable request by the Architectural Committee for additional information, the application shall be deemed approved within 45 days of being submitted to the Committee unless the application has been disapproved by the Committee. Provided, however, that all applications that violate the Association's Governing Documents or Building and Safety Codes are automatically disapproved without action by the Committee unless variances are specifically approved in writing by the Committee. Approvals by the Architectural Committee may contain conditions or requests for modification of particular aspects of the Member's architectural submission.

5.9 Review Fees and Construction Agreement. The Board may establish a schedule of fees which may be charged against the submitting party to defray any costs incurred by the Association, including architectural and/or engineering consultant fees, legal fees, and expenses for reviewing plans. In addition, the Board may require Members to sign a construction agreement.

5.10 Variances. The Architectural Committee may grant reasonable architectural variances, subject to Board approval, if the Architectural Committee determines that the variance will not: (i) constitute a material deviation from the overall plan and scheme of development within the Development; (ii) result in a material detriment; or (iii) create a nuisance with respect to the Common Area or any other Member. The granting of a variance by the Board shall in no event be deemed a variance or waiver as to any other Lot, nor shall any variance affect the applicability or enforceability of any provision of this Article in respect to any other Lot.

5.11 Engineering and Code Requirements. Plans and specifications approved by the Architectural Committee are not approved for engineering design or building code specifications. Members shall be responsible for ensuring compliance with applicable fire and building codes, ordinances, and specifications.

5.12 Inspection. The Association shall have the right, but not the obligation, to periodically inspect any improvements of which plans were approved by the Architectural Committee. Members shall allow inspection and any improvements may be halted and the Member fined if inspection is not allowed. Such inspections do not relieve a Member from his/her duty to comply with the Association's Architectural Standards and all applicable building and fire codes.

5.13 Building Department and Association Approvals. Any construction, repair, modification, or alteration of any Improvement requiring the issuance of a building permit shall be submitted by the Member to the appropriate governmental entity for review and approval. In the event of a conflict in the conditions of approval imposed by the governmental entity and the Architectural Committee, the more restrictive conditions shall control. Nothing herein shall limit the Architectural Committee from imposing conditions of approval which are more restrictive than conditions imposed by governmental agencies.

5.14 Mechanics' Liens. Members shall ensure that no lien is placed against any other Lot or against the Common Areas for labor or material furnished to their Lots. If a lien is placed against the Common Areas and other Member's Lots, and the responsible Member does not immediately cause the removal of the lien, the Association may, after written notice to the responsible Member, pay the amounts necessary to have the lien removed and levy a Reimbursement Special Assessment against the responsible Member.

5.15 Hold Harmless and Indemnify. Approval of plans by the Association signifies only a general conformance with its Architectural Standards and not with Building and Safety Code compliance, lot lines, easements, or construction best practices. The Association and its Architectural Committee, Members, Officers, Directors, employees, and agents shall not be liable for mistakes in judgment or negligence arising out of or in connection with the Association's approval or disapproval of plans.

5.16 Combining Lots. No Lots may be combined without prior written Board approval. Combining Lots shall have the following consequences: (i) the Percentage Interest in the Common Area allotted to the combined Lots shall be equal to the sum of the Percentage Interests in the Common Area of each of the combined Lots; (ii) the Assessments due and owing on the combined Lots shall be equal to the sum of the Assessments levied against each of the respective Lots so combined; and (iii) the Owner of the combined Lots shall continue to have the same number of votes assigned to the Lots before they were combined.

5.17 No Right to Divide Lots. No Member shall have the right to divide any Lot; provided, however, that once two or more Lots have been combined, the Owner of such combined Lots may seek written approval of the Board of Directors to divide the Lots and thereby restore them to their original dimensions and footprint.

5.18 Square Footage and Setbacks. The minimum and maximum square footage of structures and their setback requirements from lot lines shall comply with the Association's Architectural Standards.

5.19 Drainage. No Member or Member's family, guests, invitees or Tenants shall change the established drainage patterns over a Lot without (i) making adequate provisions for proper drainage in accordance with applicable building codes, which shall not adversely affect the property of others, and (ii) written approval of the Architectural Committee.

5.20 Occupancy of Unfinished, Temporary or Mobile Structures Prohibited. No trailer, RV, bus, mobile home, tent, shack, garage, temporary building or structure of any kind shall be occupied or lived in at any time. Permanent residential dwellings shall not be occupied or lived in until they have been completed and the exterior is made to comply with the Association's Architectural Standards.

5.21 Removal of Temporary Buildings. Temporary buildings or structures used during construction or remodeling shall be removed immediately after the completion of construction.

5.22 Diligent Construction. The construction of any building or structure shall be prosecuted diligently and continuously from the time of commencement until fully completed, and all structures, once the foundations are erected, shall be completed in eighteen (18) months.

5.23 Landscaping Following Construction. Within two (2) months of the completion of any construction work during which the Association's landscaping requirements were waived, or within any shorter time frame required by the Architectural Committee, Members shall landscape their Lots as may be required by the Association's Architectural Standards.

5.24 Waiver of Liability. Neither the Architectural Committee or its members nor the Association or its Officers, Directors, employees or agents shall be liable for any damage, loss or prejudice suffered or claimed on account of the Architectural Committee's review, approval, or disapproval of any plans, drawings or specifications, or the conformance of the construction with the approved plans.

5.25 Grandfathering of Changes. Any change made to a homeowner's property or condition under the enforcement of a statute herein, which has been approved by the Association and is properly documented prior to the adoption of the above guidelines, need not be modified in accordance with the guidelines specified herein, except as required by law.

ARTICLE 6: GENERAL RESTRICTIONS

6.1 Antennas. No antennas for transmitting or receiving radio signals or any other form of electromagnetic radiation may be installed, except as provided in the Association's Rules and Regulations, its Architectural Standards, and applicable law.

6.2 Drones. No person may operate, or cause, allow or authorize the operation of, any drone or other unmanned aircraft guided by remote control or onboard computer in the airspace above any portion of the Development or in such a way as to invade the privacy of Association guests, residents or vendors.

6.3 Health/Safety Hazards. Members shall not permit conditions which constitute a health, safety, or fire hazard to exist on their Lots or Common Areas.

6.4 Laundry. No clothesline or drying rack will be erected, maintained or used within sight of any Common Area or other Lot unless it is located behind the backyard fence of a Member's Lot. The Association may adopt reasonable rules and restrictions regarding the use of clotheslines as drying racks as allowed by law. No item may be draped over fences, trees, or Balcony or Patio walls or railings.

6.5 Nudity. Public displays of nudity are prohibited.

6.6 Nuisance. No Member may cause or permit to be caused anything which constitutes a nuisance.

- a. *Unreasonableness.* To constitute a nuisance, the activity must be such that it causes an unreasonable disturbance or annoyance, be unreasonably injurious to health, be indecent, or be unreasonably detrimental to Persons or property.
- b. *Allergies.* Residents with allergies or sensitivities must, at their own expense, take precautions to protect themselves against commonplace levels of noise, odors, dust, smoke, gases, pollen, or other environmental pollutants.
- c. *Board Determination.* Because a nuisance is largely subjective, the Association is not obligated to become involved in disputes where, in the opinion of the Board, the alleged disturbance does not constitute a nuisance. Despite the Board's determination, the parties retain the right to take appropriate legal action against each other without involving the Association.

6.7 Obstruction of Common Areas. No Common Area shall be obstructed or used for other than its intended purpose, except as designated by the Board.

6.8 Quiet Enjoyment. No one may engage in any abusive or harassing behavior or any form of intimidation or aggression, whether verbal or physical, against other Members, Residents, guests, invitees, members of the Board, or the Association's management, employees, agents, or vendors. Because the breach of quiet enjoyment is largely subjective, the Board may choose to act only against egregious breaches. In the event the Association chooses not to act on a complaint of breach of quiet enjoyment, or the complaining party believes the Association's action is not sufficient, such party may take legal action to enforce this provision against other Residents, but specifically waives his/her right to take action against the Association and its officers, directors, employees, and agents in their handling of the party's complaint.

6.9 Residential Use. No Member shall use or permit his/her Lot or any portion of it to be occupied or used for any purpose other than a private residential dwelling. Home based offices and businesses are permitted provided they do not interfere with the single family residence intent of the Development.

6.10 Satellite Dishes. Satellite dishes may only be installed as provided for in the Rules and Regulations, Architectural Standards, and applicable law.

6.11 Signs. No sign, poster, flag, banner, notice, nameplate, card, or advertisement of any kind may be displayed to the public view on or from any Lot or in or on any Common Area, except as allowed by law and as provided for in the Rules and Regulations. Owners may display one sign which is of reasonable dimensions and design, advertising that the property is for sale or lease, as allowed by law and subject to any restrictions as provided for in the Rules and Regulations.

6.12 Use of Independent Contractors. Members may use independent contractors to perform work in their Lot. Such contractors shall be licensed and insured.

The Association may, but is not required to, and is specifically relieved of any responsibility or liability for policing this provision. Members shall be liable for any injury to Persons or damage to the Common Areas, Lots and any personal property caused by the acts or omissions of such Member's contractor. The Association may in its discretion repair, restore or replace such damaged property and may impose a Reimbursement Special Assessment against the liable Member and that Member's Lot for all costs, expenses and attorney fees incurred by the Association in connection with the damage. The Reimbursement Special Assessment may become a lien against the liable Member's Separate Interest enforceable by the sale of the Member's Lot under Civil Code sections 2924, 2924(b), and 2924(c).

6.13 Window Coverings. Only appropriate window coverings may be installed on windows, as described in the Rules and Regulations. The color of such window coverings shall be in harmony with the exterior of the structure. No window may be covered by paint, aluminum foil, newspapers, bed sheets, cardboard, blankets, or other similar items.

6.14 Drains. There shall be no interference with the established drainage pattern in the Development unless an alternative provision is made and approved in advance in writing by the Architectural Committee.

6.15 Drilling and Exploration. No Lot shall be used in any manner to explore for, remove, refine, or store any water, gasoline, oil, hydrocarbons, minerals, gravel, earth, or earth substances of any kind.

6.16 Increased Insurance Rates. No Member shall permit anything be done or kept in or on any Lot or any Common Area which will increase the rate of insurance in or on any other Lot or the Common Area, or which would result in uninsurability or in the cancellation, suspension, modification or reduction of insurance in, on or covering any other Lot, Common Area or item of personal property within the Development. If, by reason of the occupancy or use of any portion of the Development by any Member, the rate of insurance on any policy held by the Association shall be increased, such Member shall become personally liable to the Association for any increase in insurance premiums caused thereby and the cost of the increase shall be assessed to such Member and his/her Lot as a Special Assessment.

6.17 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a private Residence.

6.18 Sanitary Conditions. Members shall maintain their Lots and all Improvements in a clean and sanitary condition and not allow rubbish or debris of any kind to accumulate so as to render any Lot or portion of a Lot unsanitary, unsightly, or offensive.

6.19 Storage. No Lot shall at any time be used for open air storage of building materials, vehicles, implements, tools, furniture, landscaping materials or equipment, irrigation pipes or apparatus, junk, trash or any other things whatsoever; provided, however, that building and landscaping materials, tools or equipment may be placed and maintained on building sites as provided for in the Architectural Standards.

6.20 Tanks and Receptacles. Every tank for the storage of fuel installed outside any structure on a Lot shall be either buried below the surface of the ground or screened to the satisfaction of the Architectural Committee by fencing or shrubbery.

6.21 Trash Containers. Every outdoor receptacle for trash, rubbish or garbage shall be placed, screened, and kept as provided for in the Association's Rules and Regulations.

6.22 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other approved structures. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved buildings.

ARTICLE 7: LEASING AND OWNERSHIP LIMITATIONS

7.1 Lease Requirements. Residences may not be used for time-share purposes, hotel-like operations, or other transient purposes. No Member shall lease less than an entire Residence nor shall the lease be for an initial term of less than ninety (90) days. If a Tenant vacates after less than thirty (30) days, the Member may not re-lease the Residence until the expiration of thirty (30) days from the date the Tenant moved into the Residence unless the Member applies for and receives a hardship exception from the Board.

7.2 Lease Addendum. Any lease or rental agreement between Member and Tenant shall be in writing. In addition, Member, Tenant, and the Association shall execute a "Lease Addendum" supplied by the Association. Member and Tenant shall agree, at a minimum, to the following terms: (i) the lease is for the entire Residence; (ii) Member transfers any right to use Common Area facilities to the Tenant; (iii) no assignments or subleases are permitted; (iv) the lease is for not less than ninety (90) days and if Tenant vacates after less than thirty (30) days, Member cannot re-lease the Residence until the expiration of thirty (30) days from the date the Tenant moved into the Residence unless the Member applies for and receives a hardship exception from the Board; (v) Tenant agrees to comply with the Association's Governing Documents and be subject to the same disciplinary procedures and fines as Members; (vi) Member assigns rents to the Association in the event Member becomes sixty (60) days delinquent in the payment of Assessments to the Association; (vii) Tenant shall carry renter's insurance; (viii) Member grants the Association the power to institute an unlawful detainer action on his/her behalf for violation of the terms of the Lease Addendum; and (ix) in the event of a

conflict, the terms of the Lease Addendum supersede the terms of any other agreement between Member and Tenant. In the event a Lease Addendum is not executed as described above, Member and Association shall nonetheless be bound by the terms of this section as though the Lease Addendum had been executed.

7.3 Governing Documents. Members shall provide their Tenants with copies of all Governing Documents, including, but not limited to, the CC&Rs, Bylaws, and Rules and Regulations, as well as any applicable amendments, and must ensure compliance with all provisions of the Governing Documents.

7.4 Transfer of Common Area Privileges. Any Member residing off-site and whose Residence is occupied by others automatically relinquishes to their Residents the Member's rights to use the Association's Common Area facilities until the Member re-takes possession of the Residence and the Lot.

7.5 Transfer of Occupancy. Members living offsite shall promptly provide the Association with the name, address, phone number, and email address of all Lot Residents and any change in occupancy.

7.6 Repair Damage. Members shall be liable for any and all damage to the Lots, Common Areas, and any personal property when the cause of such damage originates from that Member's Lot, or which was caused by the acts or omissions of such Member, Member's Tenant, or their respective family, guests, invitees, or pets. The Association may in its discretion repair, restore or replace such damaged property and may impose a Reimbursement Special Assessment against the liable Member and that Member's Lot for all costs, expenses and attorney fees incurred by the Association in connection with the damage. The Reimbursement Special Assessment may become a lien against the liable Member's Separate Interest enforceable by the sale of the Member's Lot under Civil Code sections 2924, 2924(b), and 2924(c).

7.7 Unlawful Detainer. Members who lease their Lots shall be responsible for assuring their Tenants comply with the Association's Governing Documents. A Member's failure to take legal action against his/her Tenant who is in violation of the Governing Documents (including the institution of proceedings in unlawful detainer) within ten (10) days after receipt of written demand to do so from the Board shall entitle the Association to institute unlawful detainer proceedings on behalf of such Member and against the Tenant. Any expense the Association incurs, including attorneys' fees and costs of suit, shall become a Special Assessment against the Lot.

7.8 Assignment of Rents. As security for the payment of Assessments and other sums owed to the Association, Members who lease their Lots hereby pledge their rights as landlords (including the right to receive rent) to the Association. In the event a Member becomes delinquent in payment of Assessments to the Association, the Association may require the Tenant to direct any and all rent payments to it until such deficiencies have been paid in full. Members shall have no right to collect these amounts from Tenants and may not evict Tenants for complying with the Association's demand for rents.

7.9 No Criminal Activity. No Person may reside on any Lot if they engage in criminal activities. For purposes of this section “criminal activities” means drug-related activities (including the illegal manufacture, sale, distribution, use or possession of a controlled substance), gang related activities, unlawful use or discharge of firearms, prostitution, or any misdemeanors or felonies enumerated in the California Penal Code. For purposes of this section “reside” means the use, residency or occupancy of any Residence by any Person for more than five (5) consecutive days or more than ten (10) aggregate days, whether or not consecutive, in any one calendar year. In addition, no Owner of a Lot shall permit, by rental agreement or otherwise, Persons who engage in criminal activities to reside on their Lot.

ARTICLE 8: PETS

8.1 Pet Limitation. Usual domesticated dogs, cats, fish, and birds may be kept as household pets. No animal shall be kept, bred, or maintained: (i) for any commercial purpose; (ii) in unreasonable numbers; or (iii) for any purpose that would involve any odor, noise, or other nuisance which would unreasonably disturb the use and enjoyment of any portion of the Development by other Members. The Board may set additional restrictions, rules, and regulations regarding the quantity, kinds and sizes of pets, and tanks which may be kept and other pet issues.

8.2 Service Animals. An animal otherwise prohibited by these CC&Rs, which is kept by a Resident for the purpose of servicing the Resident’s disability, may be kept by such Resident provided: (i) the Resident submits appropriate documentation to the Board verifying the existence of a legally-defined disability; (ii) the service animal is properly cared for by the Resident (i.e., kept healthy, clean, and properly groomed and waste material is properly disposed of); and (iii) the animal is not unruly or disruptive (e.g., barking, growling, running loose, displaying aggressive behavior, etc.). All applicable pet rules shall apply to service animals.

8.3 Nuisance. Members shall be liable to the Association and other Members for any damage to Person or property or nuisance noise caused by the pets of such Members, Members’ Tenants or their respective family, guests, or invitees. The Board shall have the right to prohibit any pet which, in its opinion, constitutes a nuisance to other Members pursuant to evidence provided at a noticed hearing.

8.4 Dangerous Animals. No animal may be kept in the Development which the Board has determined to be aggressive or dangerous pursuant to evidence provided at a noticed hearing. Pets that exhibit aggressive or dangerous behavior shall, upon request of the Board, wear a muzzle while in the Common Area until a determination is made by the Board as to whether the pet will be allowed to remain in the Development. The Association may restrict categories of animals which are dangerous or have aggressive tendencies, as designated by the insurance industry or a governmental agency.

8.5 Liability. Every Member shall be liable for any injury to Persons or property caused by any pet brought or kept within the Development by the Member, Member’s Tenant or their respective family, guests, or invitees.

8.6 Control. No pets shall be allowed in the Common Area, except as may be permitted by the Rules. No dog shall enter the Common Area, except while on a leash which is held by a Person capable of controlling it. All Members with pets are expected to follow the City of Merced's leash laws. The Association may cause any unleashed dog found within the Common Areas to be removed to a pound or animal shelter under the jurisdiction of the city or county of Merced.

ARTICLE 9: VEHICLES AND PARKING

9.1 Restricted Parking. Only the following types of vehicles may be parked or stored within the Association: automobiles, trucks, motorcycles, and mopeds. Vehicles shall be legally parked. No RV, camper, boat, recreational water craft, trailer, or any other similar vehicle is permitted unless its presence is temporary or it is screened from the view of other Owners, and as specifically provided for in the Rules and Regulations. Only permitted vehicles may be stored in parking spaces.

9.2 Commercial Vehicles. Commercial vehicles, including pickup trucks one ton or larger panel trucks, tow trucks, stake bed trucks, tank trucks, dump trucks, step vans, concrete trucks, buses, vans designed for 10 people or more, vehicles with commercial signage, and the like, are prohibited, except as provided in the Rules and Regulations.

9.3 Proper Operating Condition. All vehicles shall be maintained in proper operating condition, so as not to be a hazard or nuisance by noise, exhaust emissions, or appearance. All vehicles shall carry current registration tags and shall be insured.

9.4 Noise Limitation. All vehicles must be configured so as to provide for their quiet operation.

9.5 Repair of Vehicles. No Member shall construct or perform major repairs or service any vehicle within any Lot or portion of the Common Area, except for emergency repairs to the extent necessary for the movement of the vehicle to a proper repair facility, or on any Lot except in an area on the Lot not visible from the Common Area or neighboring properties.

9.6 Theft or Damage. The Association shall not be liable for any loss or damage suffered by any Member, Tenant or guest by reason of theft of or damage to any Vehicle or Vehicle contents, unless caused by the Association's intentional misconduct or gross negligence.

9.7 Impeding Access. No vehicle shall be parked in such a manner as to impede or prevent ready access to any other driveway or Common Area entrance or exit.

9.8 Garages. Garages shall not be sublet or converted to living spaces.

ARTICLE 10: ENFORCEMENT OF GOVERNING DOCUMENTS

10.1 Association Enforcement Rights. In addition to any other rights described in these CC&Rs and without waiving the Association's right to institute other enforcement measures, and subject to the notice and hearing provisions in the Bylaws, the Governing Documents may be enforced by any or all of the following, as may be appropriate:

- a. *Monetary Penalties*. The Board may assess reasonable monetary penalties for violations of the Association's Governing Documents by a Member, Member's Tenant or their respective family, Lot Residents, invitees or guests. Such Member shall be liable for all costs of collection, including reasonable attorneys' fees, court costs, and related expenses.
- b. *Suspend Voting Rights*. Subject to the notice and hearing provisions set forth in the Bylaws, the voting rights of a Member may be suspended for continuing violations of the Governing Documents. Once suspended, a Member's voting rights shall remain suspended until such continuing violation is cured.
- c. *Judicial Enforcement*. A lawsuit for damages and/or injunctive relief may be filed, whether or not the relief sought is for negative or affirmative action.

10.2 Cumulative Remedies. The respective rights and remedies, provided by these CC&Rs, by law, or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or for the same or different failures of the Members or others to perform or observe any provision of these CC&Rs.

10.3 Failure to Enforce Not a Waiver. Failure to enforce the Governing documents, whether by the Board or any Member or other Person entitled to enforce them, shall in no event be deemed a waiver of the right to do so. Waiver or attempted waiver of any provision of these CC&Rs with respect to a given Lot shall not be deemed a waiver as to any other Lot. Additionally, violation of any provision hereof with respect to any Lot or Lots shall not affect the applicability or enforceability of any provision of these CC&Rs to any other Lot.

10.4 Remedy at Law Inadequate. Remedies at law for violation of the Association's Governing Documents are inadequate and equitable and injunctive relief may be sought and awarded.

10.5 Right of Action Against Buyer. Failure by a Member to correct Lot violations prior to the transfer of title to the Lot shall give the Association the right to enforce compliance against the buyer.

10.6 Attorneys' Fees. In the event any party initiates any action or proceeding to enforce or interpret the Governing Documents or California law relating to the Development, the substantially-prevailing party shall be awarded reasonable attorneys' fees and costs, including reasonable experts' fees.

ARTICLE 11: ASSESSMENTS

11.1 Purpose of Assessments. The general purpose of Assessments is to provide for the recreation, health, safety, and welfare of the Members, enforce and comply with the Governing Documents, manage the Development, enhance the quality of life in the Association, improve and maintain the Common Areas, provide for the acquisition and maintenance of property, services and facilities devoted to these purposes, and for any action or undertaking on behalf of the Association.

11.2 Regular Assessment. The Board shall levy Regular Assessments in an amount sufficient to provide for the performance by the Board of each and every one of its powers and duties provided, however:

- a. *20% Limitation*. Pursuant to the Davis-Stirling Act, the Board shall not, without the approval of Members casting a majority of the votes with Quorum present, impose a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year. Quorum for the purposes of this provision means more than fifty percent (50%) of the Members of the Association.
- b. *Assessment Allocation. Uniform Rate of Assessment*. Regular Assessments shall be fixed at a uniform rate for all Lots.
- c. *Payable Monthly*. Regular Assessments shall be payable by each Member against whom assessed in twelve (12) equal monthly installments on the first day of each calendar month or at such other dates and in such other installments as the Board shall determine. Assessments for new Members shall be prorated in the first month of membership according to the date on which the individual becomes a Member.
- d. *Written Notice*. Written notice of any increase in Regular Assessments shall be sent by first-class mail to each Member not less than thirty (30) days nor more than sixty (60) days prior to the increased Assessment becoming due.
- e. *Modification of Assessment*. The Board may modify the Regular Assessments during the course of a fiscal year if necessary to conform to a revised estimate of costs and expenses. However, if the aggregate increase exceeds twenty percent (20%) of the Regular Assessment for the immediately preceding fiscal year, the Board must obtain the approval of Members pursuant to the Davis-Stirling Act. If an annual

Regular Assessment is not published for a new fiscal year, the Regular Assessment for the prior fiscal year shall apply and govern each Member's payments until changed by a new Regular Assessment

11.3 Special Assessment. In addition to the Regular Assessment, the Board may levy a "Special Assessment" for any purpose necessary for the Association to carry out its duties; provided, however:

- a. *5% Limitation*. Pursuant to the Davis-Stirling Act, the Board shall not, without the approval of Members casting a majority of the votes with Quorum present, impose a Special Assessment which is more than five percent (5%) of the budgeted gross expenses of the Association for such fiscal year. Quorum for purposes of this provision means more than fifty percent (50%) of the Members of the Association.
- b. *Rate of Assessment. Uniform Rate of Assessment*. Special Assessments shall be fixed at a uniform rate for all Lots.
- c. *Reimbursement Assessments*. Special Assessments may also be levied against individual Lots for reimbursement of expenses incurred by the Association arising out of actions or omissions of such Member, Member's Tenant, or their respective family, guests, invitees or pets. As provided elsewhere in these CC&Rs, such expenses shall include, but not be limited to: (i) enforcing compliance with the Association's Governing Documents; (ii) mitigating or repairing damage to Association property and/or Common Areas; (iii) collecting delinquent Assessments; and (iv) attorneys' fees and costs.
- d. *Payment Schedule*. Special Assessments shall be payable by each Member against whom assessed either monthly or at such dates and in such installments as the Board shall determine.
- e. *Written Notice*. Written notice of Special Assessments shall be sent by first-class mail to each Member not less than thirty (30) days nor more than sixty (60) days prior to the Assessment becoming due.

11.4 Emergency Assessment. In emergency situations, the Board may increase Regular Assessments beyond twenty percent (20%) or impose Special Assessments above five percent (5%) only as provided for by law.

11.5 Deposit of Assessments. All sums received by the Association shall be promptly deposited into accounts clearly designated in the Association's name.

- a. *Commingling*. The Association shall maintain separate accounts for its operating funds and its Reserves, respectively, and no funds from those separate accounts shall be commingled at any time.

- b. *Interest.* No Member shall have the right to receive interest on any such funds deposited.

11.6 Reserves. All sums assessed and collected by the Association which are budgeted to fund Reserves for anticipated long-term maintenance, repair, and replacement of Improvements upon the Common Area, the cost of which would not ordinarily be incurred on an annual basis, shall:

- a. *Be Segregated.* Be received in trust by the Board, set aside and segregated from the other monies and not be commingled with the Association's Operating Account.
- b. *Be Invested.* Be invested in low-risk investments. Reserves shall be deposited in financial institutions authorized to do business in California and where the Association's deposits are insured against loss. Alternatively, the Association may deposit funds with brokerage houses or institutions which are members of the Financial Industry Regulatory Authority and where the Association's deposits are insured against loss.
- c. *Require Two Signatures.* Be withdrawn from the Reserve account only upon approval by the Board and the signature of two (2) members of the Board.
- d. *Not Be Reimbursed.* All contributions to the Reserves, as well as interest earned, are for the benefit of the Association and not to the benefit of any individual Member. As such, contributions and interest are not refundable to Members when they cease to be Members of the Association.

ARTICLE 12: ENFORCEMENT OF ASSESSMENTS

12.1 Liability for Assessments. Assessments, together with charges, interest, costs, and attorneys' fees (regardless of whether legal proceedings are instituted), shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. In addition, Members shall be personally liable for any and all Assessments provided for by these CC&Rs, together with any accompanying late charges, interest, costs, attorneys' fees (regardless of whether legal proceedings are instituted), and penalties as may be authorized under these CC&Rs. All Members owning a partial interest in a Lot shall be personally liable, jointly and severally, for the entire amount of any and all Assessments against such Lot.

12.2 Enforcement Rights. Any Assessment made in accordance with these CC&Rs shall be the separate debt of each Member against whom the same is assessed. In addition to any other rights provided for by law or described in these CC&Rs, the Board has the right to collect delinquent Assessments as follows:

- a. *Late Fees and Interest.* Unpaid Assessments shall be deemed delinquent fifteen (15) days after they are due and shall be subject to a late charge of the greater of either ten percent (10%) or Ten Dollars (\$10.00), which may not be imposed more than once on any delinquent payment, and interest at the rate of twelve percent (12%) per annum, which may commence thirty (30) days after the Assessment becomes due.
- b. *File Suit.* The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien and initiate foreclosure against the Member's Lot for the delinquent Assessment. In any action to collect delinquent Assessments, late charges or interest, the prevailing party shall be entitled to costs and reasonable attorneys' fees. If such costs and fees are awarded to the Association, they shall become a Reimbursement Special Assessment against the Member and shall be fully enforceable by all means provided for in these CC&Rs including lien and foreclosure.
- c. *Lien and Foreclose.* In accordance with the Davis-Stirling Act, a delinquent Assessment or installment, together with any late charges, interest, costs, attorneys' fees, and penalties, shall become a lien on the Lot upon the recordation of a "Notice of Delinquent Assessment" in the Office of the County Recorder. The Board may enforce any Assessment lien against a Lot by filing an action for judicial foreclosure or by nonjudicial foreclosure. The Association, through its Board, may bid on the Lot at the sale and may hold, lease, mortgage, and convey the acquired Lot.
- d. *Suspend Privileges.* Subject to the notice and hearing provisions set forth in the Bylaws, privileges may be suspended until such time as delinquent Assessments, fees and fines, including any accumulated penalties, interest, and costs of collection have been paid in full.
- e. *Suspend Voting Rights.* Subject to the notice and hearing provisions set forth in the Bylaws, voting rights of a Member may be suspended if the Member is more than sixty (60) days delinquent in paying any Assessment, fee, or fine. Once suspended, a Member's voting privileges shall remain suspended until such time as the delinquency, including any accumulated late charges, interest, and costs of collection, have been paid in full.
- f. *Additional Remedies.* The remedies provided in this Section shall be in addition to, not in substitution for, any other rights and remedies which the Association may have.

12.3 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason,

including, without limitation: (i) a claim that the Association is not properly exercising its duties and powers, as provided in these CC&Rs; (ii) a Member has not made or elects not to make use of the Common Area; (iii) any construction or maintenance for which the Association is responsible that has not been performed; or (iv) any construction or maintenance for which the Association is responsible that has not been performed to a Member's satisfaction.

12.4 No Exemption by Waiver of Use. Members may not exempt themselves from liability for Assessments nor release their Lots from liens and charges by waiver of their use and enjoyment of the Common Areas, by abandonment of their Lots, or through non-use of Common Areas or membership privileges.

12.5 Attorneys' Fees. Any reasonable attorneys' fees and costs incurred by the Association in the enforcement of its Assessment rights against a Member may become a Reimbursement Special Assessment against that Member, which may be collected in any manner provided for by these CC&Rs or by law.

12.6 Non -Waiver of Assessments. If the Board fails to approve a Budget or fix the Assessments for the current year, the Budget and Assessments from the preceding year shall continue until a new Budget is approved and new Assessments are fixed.

ARTICLE 13: INSURANCE

13.1 Association Insurance. The Association shall obtain and maintain policies of insurance as described below. So as to keep premiums at a reasonable level and to ensure the insurability of the Association, the Board shall establish appropriate deductibles and make business decisions as to which losses shall be submitted to the Association's insurance carrier.

- i. *Direct Physical Loss.* The Association shall maintain one or more policies for loss or damage by fire or other risks covered by the standard "Special Form" policy (or its equivalent) on all Common Area Improvements. The amount of such insurance shall be not less than one hundred percent (100%) of the aggregate full insurable value, meaning actual replacement value. The coverage shall be written on a blanket basis with an agreed value endorsement and an inflation guard endorsement. In addition, the Board shall purchase such other endorsements which the Board may deem necessary or reasonable.
- b. *Comprehensive or Commercial General Liability ("CGL").* The Association shall maintain one or more CGL policies which shall provide appropriate liability limits for injury or death to one or more Persons in any one accident or occurrence. The Association shall carry coverage in amounts that meet or exceed those called for in the Davis-Stirling Act.

- c. *Directors and Officers.* The Association shall purchase Directors and Officers errors and omission insurance, which shall provide appropriate liability limits insuring Directors, Officers, Committee members, and management employees. The Association shall carry coverage in amounts that meet or exceed those called for in the Davis-Stirling Act.
- d. *Workers' Compensation.* The Association shall carry workers' compensation and employers' liability insurance, as may be appropriate.
- e. *Fidelity Bond.* The Association shall maintain blanket fidelity bond coverage for all Directors, Officers, Committee members, and employees of the Association handling funds of the Association or third party property. In the event the Association has delegated some or all of the responsibility for the handling of funds to a management agent, the management agent shall also be required to maintain blanket fidelity bond coverage for those Persons handling or responsible for funds of the Association.
- f. *Employment Practices Liability.* If the Association has employees, it should, depending on cost and availability, purchase employment practices liability coverage.
- g. *Automobile Liability Insurance.* If appropriate, the Association shall purchase non-owned and hired automobile coverage and garage-keepers legal liability coverage.
- h. *Umbrella Policy.* In addition to appropriate levels of insurance for all of the above, the Association may carry an umbrella policy for its public liability and property damage, Directors and Officers liability, and workers' compensation policies.
- i. *Earthquake and Flood Insurance.* The Association may purchase appropriate levels of earthquake or flood insurance, if such insurance is available and if approved by the Board or the membership. In the event the Board decides not to purchase earthquake insurance for the Association's Improvements, that decision must be made as part of the Board's annual insurance disclosure to the membership.

13.2 Member Obligation to Carry Insurance. At their sole expense, Members shall purchase the following insurance: real property and personal property coverage that insures their Lot's improvements and contents against damage or loss; premises liability that includes protection for bodily injury and property damage; and loss assessment coverage that protects against Special Assessments due to a loss which exceeds the Association's master policy limits or deductible. The Association may police this

provision but is not required to and is specifically relieved of any responsibility or liability from doing so or failing to do so.

- a. *Waiver of Claims.* Members waive their claims against the Association to the extent such claims are covered under insurance which Members are required to carry under these CC&Rs, regardless of whether Members actually carry such insurance.
- b. *Assignment of Proceeds.* If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced because of a Member's insurance coverage, that Member shall assign such insurance proceeds to the Association, to the extent of the reduction. The Board shall apply those proceeds to the same purposes as the reduced proceeds received by the Association.

13.3 Payment of Deductible. If a loss occurs as a result of the negligence or breach of CC&Rs of a Member, Member's Tenant, or their respective family, guests, invitees, or pets or as a result of a failure of a portion of the Lot or its Improvements within a Member's care, custody, or control and the loss results in a payment by the Association's insurance, that Member shall pay the Association's deductible, if any.

13.4 Management of Claims. The Board, not individual Members, shall determine which claims, if any, shall be submitted to the Association's insurance carrier. The Board may take into account the Association's claim history, the amount of the deductible, the apparent merit of the claim, etc. and make a business decision regarding which claims are submitted and which ones are not. In the event a Member makes an unauthorized claim against the Association's insurance which results in an increase in the Association's insurance premiums, the amount of the increase shall be assessed against the Member and his/her Lot as a Special Reimbursement Assessment.

13.5 Liability for Increased Insurance Rates. In the event any act or omission of any Member, Member's Tenant, or their respective family, guests, invitees, or pets causes an increase in the cost of the Association's insurance, the amount of the increase shall be assessed against the Member and his/her Lot as a Special Reimbursement Assessment.

13.6 Choice of Contractor. With respect to any repairs for which proceeds of insurance are paid or are payable to the Association, the Board shall designate the contractor to perform the repairs to the Common Areas. Individual Members shall be responsible for overseeing repairs done to their respective Lots.

13.7 Insurance Company Rating. All policies of insurance obtained by the Board shall be from an insurance company qualified to do business in the State of California and holding a Best's Insurance Reports rating of "A" or better, or such other comparable rating as may be given by Standard and Poor's.

ARTICLE 14: PROTECTION OF LENDERS

14.1 Rights of Institutional Lenders. No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority or any other mortgage) on any lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or Trustee's Sale, or otherwise. Notwithstanding any provision in this Declaration to the contrary, institutional lenders shall have the following rights:

- a. Any institutional lender who obtains title to a Lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such lot by the mortgagee, except for claims for a pro rata share of such of assessments or charges resulting from a pro rata reallocation of such assessments or charges to all project Lots including the mortgaged Lot, and except for assessment liens recorded prior to the mortgage.
- b. An institutional lender, upon request, is entitled to written notification from the Association of any default in the performance by the individual Lot borrower of any obligation under the Declaration, Articles or Bylaws which is not cured within ninety (90) days.
- c. The Association shall discharge its obligations and notify institutional lenders by sending written notices required herein to the lender or lenders requesting notice, at the address given on the request for notice, in the manner prescribed by Section 18.7.
- d. This Declaration contains no provisions creating a "right of first refusal", but should any such rights be created in the future, such rights shall not impair the rights of an institutional lender to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, or (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (3) interfere with a subsequent sale or lease of the Lot so acquired by the mortgagee.
- e. Any agreement for professional management of the Development, may not exceed two (2) years. Any such agreement must provide for termination by either party for cause on thirty (30) days written notice, or without cause and without payment of a termination fee on ninety (90) days or less written notice.
- f. Unless at least two-thirds (2/3) of the institutional lenders (based upon one (1) vote for each mortgage or deed of trust owned) and two-thirds (2/3) of the owners of the individual Lots in the project have given their prior written approval, the Association and/or the owners shall not be entitled to:

- i. By act or omission seek to abandon or terminate the project, or abandon, partition, subdivide, encumber, sell or transfer the common area or property owned directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause) except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in case of a taking by condemnation or eminent domain; or
- ii. Make any amendment which would change the percentage interest of the Members in the Development.
- g. Any institutional lender will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, and (b) receive an annual financial statement of the Association within ninety (90) days following the end of the fiscal year of the project, and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.
- h. Institutional lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common area property and may pay overdue premiums on hazard insurance policies, or secure common area property and institutional lenders making such payment shall be owed immediate reimbursement therefor from the Association, prior to the making of such payment (s) and the Association has failed to pay the same.
- i. No Member or any other party shall have priority over any rights of institutional lenders pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of common area property.
- j. Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common area that must be replaced on a periodic basis, and the assessments therefor shall be payable in regular installments rather than by special assessments.

ARTICLE 15: LIMITATIONS OF LIABILITY

15.1 Standard for Liability. Officers, Directors, Committee members, employees, or agents shall not be responsible to any Member, Member's Tenant, or their respective family, guests, or invitees for any loss or damage to Person or property suffered by reason of water, fire, smoke, explosion, electricity, dust, sand, insect or rodent infestation, or any other source, unless there is clear and convincing evidence the damage or loss was caused by the gross negligence or willful misconduct of the

Association's Officers, Directors, Committee members, employees, or agents. The standard for determining liability shall not be strict liability.

15.2 Limited Personal Liability. No Officer, Director, Committee member, or employee of the Association shall be personally liable for any loss, injury, or damage to Persons or property for any act or omission, if the act or omission was performed in good faith, within the scope of the Person's duties for the Association, was not self-dealing, and did not constitute intentional misconduct or gross negligence.

15.3 Association Not a Security Provider. The Association may, from time to time, provide measures of security in the Development. However, the Association is not a provider of security and shall have no duty to provide any security in the Development. The obligation to provide security lies with each Member individually. The Association shall not be held liable for any harm to Persons or property by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. This shall include, but not be limited to, any loss or damage suffered by reason of theft of or damage to any article or thing which is placed or stored in or on any portion of the Common Area.

15.4 Duty to Defend. The Association shall indemnify and defend and shall advance reasonable attorneys' fees and costs to its Officers, Directors, Committee members, and employees against all expenses and liabilities reasonably incurred by such Person(s) in connection with any proceeding (including, but not limited to, alternative dispute resolution proceedings) to which they may be a party by reason of having been an Officer, Director, Committee member, or employee of the Association. Provided, however, the Association may recover its attorneys' fees and costs from, and shall not be liable for any judgments or other liabilities for, those Persons who are adjudged to have acted in bad faith or in gross negligence in the performance of their duties.

15.5 Personal Injury or Property Damage Sustained Within a Lot. The following shall apply if any Person sustains personal injury or property damage within a Lot and the injury or damage results in a claim against the Association or any of its Officers, Directors, Committee members, Members, agents, or employees. The Owner of the Lot where the injury or damage occurred shall: (i) fully indemnify and hold harmless the Association, Officer, Director, Committee member, Member, agent, or employee against whom such claim or suit is brought; and (ii) defend, at his own cost and expense, any resulting litigation against the parties. However, there shall be no obligation to defend or indemnify any party whose gross negligence or willful misconduct was the cause of the injury or damage.

15.6 Actions Against Volunteers. No cause of action against a Person serving without compensation as Director or Officer of the Association on account of any negligent act or omission by that Person within the scope of that person's duties as Director acting in the capacity of a board member, or as an Officer acting the capacity of, and within the scope of the duties of, an Officer, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes that claim to be filed after the court determines that the party seeking to file the pleading has established evidence that substantiates the claim.

ARTICLE 16: DAMAGE/DESTRUCTION TO IMPROVEMENTS

16.1 Association's Duties. In the event of partial or total destruction of Common Area Improvements the Association is obligated to maintain, it shall be the duty of the Association to restore and repair the same to its former condition (or better) as promptly as practical. The proceeds of any insurance received shall be used for such repairs and/or replacement.

16.2 Member's Duties. In the event of partial or total destruction of Improvements on a Member's Lot, it shall be the duty of the Member to either: (i) restore and repair the same to its former condition (or better) as promptly as practical, or (ii) as promptly as possible remove the damaged Improvement as well as all debris and place the Lot in a clean and presentable condition to the satisfaction of the Architectural Committee.

16.3 Duties of Board During Reconstruction. If reconstruction is undertaken, the Board shall: (i) enter into a written contract with a contractor who is licensed and insured for such repair, reconstruction, and restoration; (ii) disburse insurance proceeds available for the work, along with funds collected by reason of Assessments, in appropriate progress payments; and (iii) take all steps necessary to ensure the commencement and completion of such repair, reconstruction, and restoration in a lawful, workmanlike manner at the earliest possible date.

ARTICLE 17: CONDEMNATION

17.1 Notice. Promptly upon learning of any potential condemnation or sale by eminent domain, the Board shall notify all Members and first mortgagees who have filed a written request for notice.

17.2 Payment for Common Area. In the event an action in eminent domain is brought to condemn all or any portion of the Common Areas, the Association shall represent the Members in all proceedings, negotiations, or settlements. Awards for the acquisition of Common Area shall be paid to the Board, as trustee, for deposit into the Association's Reserves unless a majority of the total voting power of the Association elects to distribute the award among the Members in accordance with their Percentage Interest.

17.3 Payment for Lot. In the event that an action in eminent domain is brought to condemn all or any portion of one or more Lots, the award made for such taking shall be payable to the respective Owners of the Lots, subject to: (i) the rights of Mortgagees holding Mortgages covering such Lots; and (ii) all unpaid Assessments of each Member, taken together with interest charges. The Board of Directors shall have no responsibility for the restoration of a Member's personal property taken as a result of condemnation.

17.4 Revision of Documents. In the event of any condemnation of a part of the Development, the Board shall, as soon as practical, cause to be prepared, filed, and/or recorded a revised subdivision map, or other documents, reports, schedules, or exhibits necessary to show the changed or altered status of the Development.

17.5 Status of Membership. In the event a Lot is taken in condemnation, the Lot shall cease to be part of the Development, the Member shall cease to be a Member of the Association, and the Percentage Interest in Common Area appurtenant to that Lot shall automatically become vested in the remaining Members, in proportion to their respective Percentage Interests in the Common Area.

ARTICLE 18: MISCELLANEOUS

18.1 Amendment. These CC&Rs may be amended by the vote or written consent of Members comprising more than fifty percent (50%) of the Voting Power of the Association or as provided for by law, provided that the percentage of the Voting Power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. Any amendment enacted in compliance with this provision shall become effective when recorded with the Office of the County Recorder.

18.2 Lender Approval. If a First Mortgagee is entitled by the terms of these CC&Rs to consent to or approve a proposed amendment or restatement to the CC&Rs, fails to return a ballot, such first Mortgagee shall be deemed to have consented to and approved the proposed amendment or restatement, provided the ballot was delivered by certified or registered mail with return receipt requested and the delivery signed for by a representative of the First Mortgagee.

18.3 Approval of City for Major Reconstruction. The Development has been approved by the City of Merced by the granting of a special development permit. Any major or substantial change, modification, restoration, or reconstruction different from original construction shall require advance approval of the City.

18.4 Amendment to Conform to Statute. If at any time a provision in these CC&Rs contradicts current law, according to a written opinion of the Association's legal counsel, the Board of Directors will have the authority, on the unanimous approval of the Directors and without approval of the Members, to amend that provision, but only to the extent necessary to render the provision compliant with applicable law.

18.5 Term of CC&Rs. These CC&Rs shall continue in full force and effect for a term of sixty (60) years from the date of their recordation, after which time they shall be automatically extended for successive periods of twenty (20) years, unless within six (6) months prior to the expiration of the initial term or any twenty (20) year extension period a written agreement executed and acknowledged by at least seventy five percent (75%) of the Members is placed on record in the office of the County Recorder, terminating the effectiveness of these CC&Rs.

18.6 Attorneys' Fees. Any reasonable attorneys' fees and costs incurred by the Association in the enforcement of the Governing Documents against a Member or to determine the rights or duties of the Member under the Governing Documents may be levied against that Member by the Board as a Reimbursement Special Assessment, which may be collected in any manner provided for by these CC&Rs or by law.

18.7 Notices. Any communication or notice of any kind permitted or required herein may be delivered as provided in these CC&Rs and shall be in writing and may be served, as an alternative to personal service, by mailing same as follows:

To a Member: To the street address of the Lot or at such other address as Member may designate in writing to the Association.

To the Association: To the address of the Manager or the Board President.

All notices or demands to be served by mail shall be by first-class mail or certified mail with postage prepaid. Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail.

18.8 Headings. The headings contained in these CC&Rs are for convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision of these CC&Rs.

18.9 Liberal Construction. The provisions of the Governing Documents shall be liberally construed to effectuate their purpose of creating a uniform plan for the use, operation and maintenance of the Development.

18.10 Number and Gender. Whenever the context so requires, the singular number includes the plural, the plural includes the singular, the masculine gender includes the feminine and/or neuter, and the neuter gender includes the masculine and/or feminine.

18.11 Severability. The provisions of these CC&Rs and any other Governing Document shall be deemed independent and severable and the invalidity, partial invalidity, or unenforceability of any one provision shall not affect the validity or enforceability of any other provision.

18.12 No Public Rights. Nothing contained in these CC&Rs shall be deemed to be a gift or dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

18.13 Successor Association. In the event the Association, as a corporate entity, is dissolved, a nonprofit, unincorporated association shall, without further action, automatically succeed to all the rights and duties of the corporation. The affairs of the unincorporated association shall continue to be governed by these CC&Rs, the Bylaws, Architectural Standards, and the Rules and Regulations, as well as any applicable law.

18.14 Conflicting Provisions. In the event of any conflict between these CC&Rs and the Articles or the Bylaws, these CC&Rs shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control.

B. CERTIFICATION

WE CERTIFY this ____ day of _____, 20__ that this Restated Declaration of Covenants, Conditions and Restrictions has been duly approved and adopted by the membership of Fahrens Park – Los Verdes Association.

FAHRENS PARK – LOS VERDES ASSOCIATION.

President

Secretary

SIGNATURES MUST BE NOTARIZED