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**FIRST RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR FIELDSTONE
OWNERS ASSOCIATION**



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**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FIELDSTONE**

This First Restated Declaration of Covenants, Conditions and Restrictions of Fieldstone is made by the Fieldstone Owners Association, a California nonprofit mutual benefit corporation (the "Association").

RECITALS

- A. The Association is a *sui juris* entity, as provided for in California Civil Code Section 4080, which has been created to manage the common interest development located in the County of Calaveras, State of California commonly known as Fieldstone and more particularly described in Exhibit "A", as attached hereto and incorporated herein (the "Development");
- B. The original developer, Emerald Creek, LLC, a California limited liability company, executed a document entitled *Fieldstone Planned Development Declaration of Restrictions*, as recorded on July 22, 2004 as document number 2004-15991, in the Official Records of the County of Calaveras, State of California (the "Original Declaration"). The following amendments to the Original Declaration were adopted and recorded as follows: (1) *Amendment to Fieldstone Planned Development Declaration of Restrictions*, as recorded on January 30, 2009 as Document Number 2009-1300; or and (2) *Second Amendment to Fieldstone Planned Development Declaration of Restrictions*, as recorded on June 10, 2014 as Document Number 2014-5612 (Collectively, the "Original Declaration Amendments").
- C. The Original Declaration and Original Declaration Amendments established certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in the real property comprising the Development; and
- D. Not less than a majority of the Members in good standing voted to amend, restate and supersede the Original Declaration pursuant to Article 16 of the Original Declaration.

NOW, THEREFORE, it is hereby declared as follows:

- 1. The Original Declaration and Original Declaration Amendments are hereby amended, restated and superseded in their entirety to read as set forth in this Declaration. All of the real property comprising the Development constitutes a "planned development", as that term is defined in California Civil Code Section 4175.
- 2. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development

and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.

3. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 5975, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

1 DEFINITIONS

- 1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.
- 1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting or enforcing payment of Assessments, fines, or penalties.
- 1.3 Adjoining Lot. "Adjoining Lot" shall mean any Lot improved with a portion of a Building that contains two (2) Units, one of which is located on that Lot and the other of which is located on another Lot. The two (2) Lots sharing such buildings are "Adjoining Lots".
- 1.4 Adjoining Unit. "Adjoining Unit" shall mean any Unit attached to another Unit as part of the same Building located on Adjoining Lots. Each Unit within such Building is an Adjoining Unit to the other Unit within that Building.
- 1.5 Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board pursuant to the Governing Documents.
- 1.6 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.7 Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in this Declaration. "Assessment" shall include any or all of the following:
 - 1.7.1 Annual Assessments, which shall mean the amount of money estimated by the Board that is required by the Association for such fiscal year to (a) manage, administer, operate, and maintain the Development, (b) to conduct the affairs of the Association, and (c) to perform all of the

Association's duties in accordance with this Declaration.

- 1.7.2 Enforcement Assessments, which shall mean an assessment levied by the Board to collect any fine authorized by the Governing Documents.
- 1.7.3 Reimbursement Assessments, which shall mean, as provided in more detail by this Declaration, an assessment levied against an Owner to recover money expended by the Association as a result of: (a) a breach by the Owner of the Governing Documents; 2. the need of the Association to make emergency repairs; or (c) any provision of this Declaration authorizing such an assessment
- 1.7.4 Special Assessments, which shall mean an assessment necessitated by any inadequacy of the Annual Assessment or by the need for funds for an activity authorized by the Governing Documents.
- 1.7.5 .
- 1.8 Association. "Association" shall mean the Fieldstone Owners Association, a California non-profit mutual benefit corporation, its successors and assigns.
- 1.9 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.10 Bret Harte Drive Fence. "Bret Harte Drive Fence" shall mean the wooden fence facing Bret Harte Drive and, in part, Highway 4.
- 1.11 Bret Harte Drive Landscaping. "Bret Harte Drive Landscaping" shall mean the Landscaping installed along Bret Harte Drive between the roadway and the Bret Harte Fence.
- 1.12 Building. "Building" shall mean each residential structure located upon two (2) Adjoining Lots, containing Adjoining Units and Common Structures. A Building includes all living areas and garages serving such Adjoining Units.
- 1.13 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly adopted amendments thereof.
- 1.14 Committee. "Committee" shall mean any committee or other body created by the Board to assist the Board in carrying out its duties or responsibilities.
- 1.15 Common Area. "Common Area" shall mean (a) the Recreational Facility; (b) the Tank Storage Site; (c) the Private Street; and (d) any Lot or parcel designated as Common Area in any Declaration of Annexation or on any Recorded subdivision map or parcel map of a Subsequent Phase. Common Area includes all improvements on or to any Lot so shown or designated. In addition, Common Area includes the Parcel E Block Wall, the Parcel E Landscaping, the Entry Sign, the Bret Harte Drive Fence, the Bret Harte Drive Landscaping and Front Yard Areas,

but only for the sole purpose of maintenance by the Association. Any Lot or other interest in real property acquired by the Association is not Common Area unless it is designated as common Area by this Declaration, a Declaration of Annexation, or by resolution adopted by the Board or by the Owners.

- 1.16 Common Facilities. "Common Facilities" shall mean the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, beams, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.
- 1.17 Common Structure. "Common Structure" shall mean each part of a Building located on the common Lot line shared by Adjoining Lots, or unimproved area serving each such Building which serves both adjoining Units within such building, including: (a) structural elements and structural bearing walls for both such Units, other than a Joint Service; (b) any common walkway serving such Building; and (c) any fence located on the common Lot line shared by such Adjoining Lots. A roof is not a Common Structure except as to any portion that serves both of the Adjoining Units.
- 1.18 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.19 County. "County" shall mean the County of Calaveras, State of California.
- 1.20 Declarant. "Declarant" shall mean, as indicated by the context, either the Association or Emerald Creek LLC, a California limited liability company.
- 1.21 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time.
- 1.22 Development. "Development" shall mean all the real property described in Recital "A" of this Declaration as well as such other real property as may hereafter be brought within the jurisdiction of the Association.
- 1.23 Director. "Director" shall mean a member of the Board of Directors.
- 1.24 Driveway. "Driveway" shall mean the driveway connecting one (1) or more Unit to the Private Street. (See also the definition of "Shared Driveway" below.)
- 1.25 Entry Sign. "Entry Sign" shall mean the entry monument located on Lot 23 in the area described on the Map as "Sign and P.U.E." the Entry Sign includes the surface improvements, landscaping, and subsurface landscape irrigation equipment, if any, in such area.

- 1.26 Fieldstone Drive. See "Private Street."
- 1.27 Front Yard Area. "Front Yard Area" shall mean the planting beds in front of each unit, when applicable, the planting beds along the sides of units, for which the Association bears the maintenance responsibility.
- 1.28 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Development Rules (including the Architectural Rules), and the policies and resolutions duly adopted by the Board and distributed to the Members.
- 1.29 Guest. "Guest" shall mean the same as guest, invitee or licensee as those terms are used at common law.
- 1.30 Improvement(s). "Improvement(s)" shall mean all physical improvements and includes, without limitation; (a) buildings, outbuildings, sheds, basements, propane tanks and storage buildings; (b) roads, driveways, and parking areas; (c) fences, gates, walls, sound walls and retaining walls; (d) stairs, decks, hedges, patios, signs, and windbreaks; (e) poles and antennae; (f) landscape irrigation pipes, timers, sprinklers, and associated Improvements, man-made canals, pumps, fountains, aerators, bridges, dams, swimming pools, lakes and watercourses, spas, hot tubs, tennis courts, signs and recreational structures; (g) mechanical, utility and communication installations and solar panels, whether above or underground; and (h) any work, structure and excavation of any kind, whether temporary or permanent, and anything deemed to be a "work of improvement" as defined in California Civil Code Section 3106.
- 1.31 Joint Service. "Joint Service" shall mean any common service, utility, or other facility serving both Adjoining Units within the same Building of Adjoining Lots, which is not maintained by a utility service provided or by the Association.
- 1.32 Landscape Criteria. "Landscape Criteria" shall mean a binder, book or similar document maintained by the Board which contains guidelines for the design and maintenance of the Landscaping and which may be updated from time to time by the Board.
- 1.33 Landscaping. "Landscaping" shall mean plantings including trees, shrubs or ground cover as well as any associated irrigation equipment or other materials such as mulch, bark or stone.
- 1.34 Lot. "Lot" shall mean any plot of land shown upon any Development Map, with the exception of the Common Area.
- 1.35 Local Law. "Local Law" shall mean any law, statute, ordinance, regulation or similar provision that applies to the Development whether such provision originates with the Federal government, State of California, Calaveras County or a special district.

- 1.36 Member. "Member" shall mean an Owner.
- 1.37 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.
- 1.38 Mortgage. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Development. A "Mortgagee" and "Mortgage Holder" shall include the beneficiary under a Mortgage. An "Institutional Mortgagee" or "Institutional Holder" is a Mortgagee that is a bank or savings and loan association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency, and that holds a first Mortgage on any Lot or on the Common Area.
- 1.39 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the official records of the office of the County recorder, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.40 Parcel A. "Parcel A" shall mean the pool area (see Recreational Facility) as shown on maps of the Development.
- 1.41 Parcel B. "Parcel B" shall mean the area where the propane storage tanks are located (see Tank Storage Area) as shown on the Development Map.
- 1.42 Parcel E Block Wall. "Parcel E Block Wall" shall mean the block wall located at the common boundary shared by Lots 1 through 8, inclusive, and Parcel E.
- 1.43 Parcel E Landscaping. "Parcel E Landscaping" means the landscaping and associated irrigation system equipment located on Parcel E as shown on the Development Map.
- 1.44 Party Fence. "Party Fence" shall mean any fence built along a property line between Lots.
- 1.45 Party Wall. "Party Wall" shall mean the wall separating, but shared by, two adjoining Units. Party Wall does not include a fence that might divide one Lot from another Lot.
- 1.46 Perimeter Fence. "Perimeter Fence" shall mean any fence built along a property line between a Lot and a parcel outside of the Fieldstone development. The Bret Harte Fence is an example of a Perimeter Fence.
- 1.47 Private Street. "Private Street" shall mean the improvement located upon: (a) Lot F,

as shown on the Development Map; and (b) any property designated as a portion of the Private Street in a Declaration of Annexation. The Private Street, designated as "Fieldstone Drive" on the Development Map, includes street lighting, curbs, gutters and street surface connecting all Lots to Bret Harte Drive.

- 1.48 Quorum. "Quorum" shall mean the minimum number of Members who must be present in person or by proxy to conduct business.
- 1.49 Record. "Record" shall mean, with respect to any document, the recordation or filing of such document in the office of the County recorder.
- 1.50 Recreational Facility. "Recreational Facility" shall mean the Improvements located upon Parcel A, as shown upon the Development Map, which includes a swimming pool, recreation room, restrooms, parking spaces, gazebo fencing and the Landscaping (see also Parcel A).
- 1.51 Resident. "Resident" shall mean any person who resides in a Unit within the Development whether or not such person is an Owner as defined above.
- 1.52 Rules/ Development Rules. "Rules" and "Development Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time and shall include, without limitation, the Architectural Rules.
- 1.53 Shared Driveway. "Shared Driveway" shall mean any driveway connecting garages for two (2) Units to the Private Street. (See also definition of "Driveway").
- 1.54 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (a) represented and voting at a meeting at which a quorum is present, or (b) cast by ballot in which the number of ballots received equals or exceeds the number required to establish a quorum.
- 1.55 Development Map. "Development Map" or "Map" shall mean that certain subdivision map entitled "Fieldstone Development" and filed for Record on July 16, 2004 in Book 8, at Page 19, Records of Calaveras County by Document No. 2004-15560. If the term "Map" is used in connection with a subsequent Phase of the Development, the term "Map" shall also refer to the subdivision map or maps for the land involved in such Subsequent Phase.
- 1.56 Tank Storage Site. "Tank Storage Site" shall mean the Improvements located upon Lot Parcel B, as shown upon the Map, which may include storage facilities and portions of a distribution system for the delivery of liquefied propane gas to the Residents, fencing and the Landscaping on Parcel B.
- 1.57 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote

for each Lot, excluding any Lots as to which an Owner is not then a Member in Good Standing.

- 1.58 Unit. "Unit" shall mean the Improvements located on each Lot, comprising a portion of a Building containing a single family residential dwelling. A Unit contains living facilities, including provision for sleeping, eating, cooking, and sanitation for one (1) household.

2 COMMON AREA

- 2.1 Purpose of Common Area. Subject to the provisions of the Declaration, the Common Area shall be held and maintained by the Association, and shall be used to meet the common interests of the Owners, the members of the Owners' households, and the Owners' tenants, resident Contract Purchasers, and guests as provided in the Governing Documents.
- 2.2 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area, including ingress and egress to and from his or her Lot. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:
- 2.2.1 The right of the Board to establish and enforce reasonable Rules governing use of the Common Area.
 - 2.2.2 The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use Common Facilities located on the Common Area for (a) any period during which any Assessment against such Owner's Lot remains unpaid, or (b) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible.
 - 2.2.3 The right of the Association, as set forth in Article 3 of this Declaration, to grant easements and rights of way in, on, over, or under the Common Area.
 - 2.2.4 The right of the Association to sell, dedicate or transfer all or any part of the Common Area, subject to the provisions of the Governing Documents.
 - 2.2.5 The right of the Association to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association.
 - 2.2.6 The right of the Association to borrow money in accordance with the Governing Documents.
 - 2.2.7 The right of the Association, through its authorized agents, to enter any Lot or Unit to perform its obligations under this Declaration, including

obligations with respect to construction, maintenance, repair or replacement for the benefit of the Common Area or the Owners in common, or to make necessary repairs that the Lot Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Lot or Unit and the obligation can be performed whether or not the Owner is present.

2.2.8 The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area including without limitation recreation facilities, storage facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents.

2.2.9 The right of the Association to assign, rent, lease or otherwise designate and control use of unassigned parking and storage spaces within the Common Area.

2.3 Assignment of Rights of Use. Any Owner may assign his or her rights of use and enjoyment, including easements, in the Development to the members of his household, tenants, Contract Purchasers and guests, subject to the terms of the Governing Documents. Upon the leasing of a Lot, or upon occupancy of a Lot by a Contract Purchaser, the Owner shall be deemed to have assigned all such rights exclusively to the tenants or Contract Purchasers of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge of the Owner's obligations and rights as a landlord. Each Owner shall notify the Secretary of the Association of the names of any tenants or any such Contract Purchasers of such Owner's Lot. Each Owner, tenant, or Contract Purchaser shall also notify the Secretary of the Association of the names of all members of his or her household to whom such Owner, tenant, or Contract Purchaser has assigned any rights of enjoyment in the Development as provided herein and the relationship which each such person bears to such Owner, tenant, or Contract Purchaser. Any rights of enjoyment assigned pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

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

the Common Area.

- 2.5 **Mechanic's Liens.** In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

3 EASEMENTS

- 3.1 **Reservation of Easements.** Easements, reservations, and rights of way may be made by this Declaration, by designation on the Map, by dedication, or by reservation by Declarant in any conveyance.
- 3.2 **Consent of the Board.** No house, building, or other structure of any kind shall be built, erected, or maintained upon any such easement, reservation, or right of way without the express consent of the Board.
- 3.3 **Extinguishing Reservations.** The Association shall have the right at any time to extinguish easements, reservations, and rights of way created solely by this Declaration, without obtaining the consent of the holder or owner of any such easement or right-of-way, unless such holder or owner's consent is required elsewhere in this Declaration. However, no such extinguishment shall deprive an Owner of access to such Owner's Lot, the Development, or any facility such Owner is entitled to use by virtue of this Declaration.
- 3.4 **Clearing Reserved Area.** The Association or a holder of a right to use an easement, shall have the right at any time to cut and remove any trees or branches from such

easements, reservations, and rights of way as may be necessary for their use provided that the holder of such an easement must obtain the permission of the Board before undertaking such removal.

3.5 Private Road Right-of-Use. The Owner of a Lot has a right-of-use for such Owner, the Resident of the Lot, and the guest of such Owner or Resident over the Private Street for ingress and egress by pedestrians, vehicles, and motor vehicles to any connecting public street.

3.6 Association Right of Use. This Section describes the right-of-use held by the Association within the Development. All rights-of-use held by the Association, as described in this Declaration, are for the use of its directors, officers, agents, contractors, employees, licensees, or concessionaires in the performance of Association business.

3.6.1 General. The Association has a nonexclusive easement and right-of-use upon and over all of the Development for the purpose of performing its powers and duties as described in this Declaration. Such easement and right of use includes, without limitation, the right to maintain the Development and to enforce all provisions of the Governing Documents.

3.6.2 Entry Upon Lots. The Association has a right of entry onto any Lot, without civil or criminal liability for such entry, by persons whose services are required to: (a) correct any condition existing on the Building on such Lot; (b) maintain, repair, clean up, or replace any Improvement; and (c) correct or abate any violation of the Governing Documents including, without limitation, the removal of any Improvement causing such violation. Entry upon any Lot requires that the Association employ one of the following methods, except as provided elsewhere in this Declaration:

- (a) the Association gives prior notice to the Resident of such Lot and the Resident consents to such entry; or
- (b) if the Resident withholds consent to any request for entry, the Association obtains an order granting such entry from a court of competent jurisdiction.

Entry upon a Lot shall be made with the least practicable inconvenience to the Owner or Resident. Nothing in this Section places any duty upon the Association to perform such work.

3.6.3 Entry Into Units. The Association has a right of entry into any Unit, without civil or criminal liability for such entry, by persons whose services are required to: (a) correct any condition existing within the Building containing such Unit; (b) maintain, repair, clean up, or replace any Improvement; and (c) correct or abate any violation of the Governing Documents including, without limitation, the removal of any Improvement

causing such violation. Entry into any Unit requires that the Association employ one (1) of the following methods, except as provided in Section 3.6.4:

- (a) the Association gives prior notice to the Resident of such Lot and the Resident consents to such entry; or
- (b) if the Resident withholds consent to any request for entry, the Association obtains an order granting such entry from a court of competent jurisdiction.

Entry into a Unit shall be made with the least practicable inconvenience to the Owner or Resident. Nothing in this Section places any duty upon the Association to perform such work.

- 3.6.4 **Emergency Conditions.** The Association does not need to obtain the prior consent of the Owner or Resident of a Lot for any entry made to correct an emergency condition which threatens personal injury or death to persons or which threatens substantial damage to property upon such Lot or any other Lot or to the Common Area.
- 3.6.5 **Front Yard Area Easement.** The Association has a nonexclusive easement and right-of-use on and over the Front Yard Areas to perform its duties with respect to maintenance of front yard landscaping. This easement includes the right to install and maintain Front Yard Area Landscaping and irrigation systems serving such landscaping, including the control of individual irrigation valves, clocks, and controllers. The Association shall have exclusive access to timers and lock boxes controlling the irrigation system in the Front Yard Areas serving such irrigation system controls. This easement includes the right of the Association to maintain, repair or replace any part of an irrigation system. If any irrigation water meter and common irrigation system controls serving more than one (1) Lot are located upon any Lot, the Association has a nonexclusive easement over and upon such Lot for access to all control timers and lock boxes serving such irrigation system, and for maintaining adequate water service and water supply to the Front Yard Area Landscaping in all or any part of the Lots.
- 3.6.6 **Development Walls, Fences and Landscaping.** The Association shall have a non-exclusive right-of-use over all Lots adjacent to California State Highway 4, Bret Harte Drive, and any other public right-of-way to carry out its responsibilities or to exercise its rights including, without limitation, the maintenance, repair or replacement of any wall, fence, monument, Landscaping or similar element that is the responsibility of the Association. The Parcel E Landscaping, the Bret Harte Drive Landscaping, the Parcel E Block Wall, and the Bret Harte Drive Fence are

expressly subject to this Subsection.

3.6.7 Lot 23 Entry Sign. The Association has a non-exclusive easement and right-of-use over the Entry Sign area of Lot 23 to perform the maintenance of the Entry Sign Improvements and landscaping, if any, that the Association is required to maintain, pursuant to this Declaration.

3.6.8 Party Fences. The Association has a non-exclusive easement and right-of-use over any Lot to maintain, repair or replace any Party Fence.

3.7 Driveway Easements. This Section provides for easements held by both the Association and by the Owners requiring a Shared Driveway or Driveway for ingress and egress to their garage for the parking of their motor vehicles.

3.7.1 Association Easements. The Association has a non-exclusive easement over and upon a portion of all Lots for access to and maintenance, repair, replacement and reconstruction of any Driveway or Shared Driveway.

3.7.2 Owner Access Easements. The Adjoining Driveway Lots benefiting from or burdened by the Driveway Easements are identified in this Subsection in pairs of Lots, with each Lot in the pair having an easement ("Benefited Driveway Lot") over the other Lot in the pair ("Burdened Driveway Lot"). The pairs of Lots having the use of the same Driveway are identified as follows: Lots 1 and 2; 3 and 4; 5 and 6; 7 and 8; 9 and 10; 11 and 12; 13 and 14; 15 and 16; 17 and 18; 19 and 20; 21 and 22; 25 and 26; 27 and 28; 31 and 32; 33 and 34; 35 and 36; 37 and 38; 39 and 40, and 42 and 43. Each Benefited Driveway Lot has a non-exclusive easement over the Driveway located upon the Burdened Driveway Lot for the purpose of access by vehicles of the Resident of the Benefited Lot, to and from the street, to the garage serving the Lot of the Benefited Lot. Lots 23, 24, 29, 30, 41, 44, 45, and 46 are not subject to this Article because their driveways are not shared with any other Owner.

3.8 Encroachments. If any improvements within the Common Area encroach upon any Lot, or if any Improvement located upon a Lot encroaches upon the Common Area, or upon another Lot, for any reason including, without limitation: (a) construction, reconstruction, repair, shifting, settlement, movement of any part of the Development; (b) any work approved by the Board; or (c) misdescription or error in draftsmanship on a subdivision or parcel map, other than an intentional encroachment, an easement exists for such encroachment and for its maintenance so long as the encroachment remains, and all Lots and the Common Area are subject to such easements. In no case shall such easement extend more than twelve inches (12") into a Lot or Common Area.

4 USE RESTRICTIONS

- 4.1 **Residential Use.** No Lot shall be occupied, used, or improved for other than residential and associated noncommercial purposes except as provided for in this Declaration. No Lot shall be occupied by more than one (1) household, except that a Lot may be occupied by a household that includes one adult unrelated to any other adult in the household. No Lot may be rented or leased for transient or hotel purposes, which is defined as any lease or rental for thirty days or less.
- 4.2 **No Partition.** There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof; provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such co-tenants.
- 4.3 **Trade or Businesses.** The conducting of any trade or business is prohibited except those trades or businesses that are permitted by and comply with Local Law and ordinances and which do not: (a) change the overall residential use of the Unit; (b) require the use of more than twenty percent (20%) of the square footage of the Unit and are conducted entirely within the Unit; (c) have persons other than a Resident employed or reporting to work at the Unit; (d) display signs or other exterior indications of a trade or business; (e) have items sold or offered for sale on the premises; (f) involve in-person calls by customers, employees, or deliverymen except on an infrequent basis; or (g) require the storage of large amounts of bulky goods or inventory or any hazardous or toxic materials. Notwithstanding the foregoing, the Board may prohibit or restrict the operation of a business if doing so is in the interest of the Association.
- 4.4 **Nuisances.** Activities, noises, uses, and Improvements are prohibited which are: noxious, illegal, or offensive; which may be or become a nuisance, or create an unsafe condition, or cause unreasonable embarrassment, disturbance, or annoyance to Residents in the quiet enjoyment of their Lots; which may adversely affect the availability or cost of insurance; or which may impair the structural integrity of any building.
- 4.5 **Requirement of Architectural Approval.** As addressed in greater detail elsewhere in this Declaration, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting and all other exterior Improvements are subject to prior approval of the Board.
- 4.6 **Noise.** The Board may adopt rules governing noise levels provided that any such rules are not less restrictive than relevant Local Laws.
- 4.7 **Sports Apparatus.** The erection of basketball standards or basketball hoops is prohibited except with the permission of the Board, which such permission shall be

granted for a period not to exceed a year at a time. Unless approved in advance by the Board, no sports equipment or play structures or equipment such as jungle gyms, swing sets, slides, wading pools, trampolines shall be permitted in areas visible from the street.

- 4.8 Window Coverings. The hanging from, affixing to, or maintaining in any window, any signs not permitted by this Declaration or any aluminum or metal foil or other reflective materials is prohibited. The color and other characteristics of curtains, drapes, drape linings, shades, blinds, or other coverings visible from the Private Street shall be natural wood, white, or off-white unless other colors are permitted by the Rules. All window coverings must be kept in a good and attractive condition.
- 4.9 Signs. No signs may be placed in the Front Yard Area with the exception of a reasonably sized sign advertising a Unit for sale provided that the placement of such a sign is approved by the Board. The owner of a Unit is responsible for any damage, including any damage to any irrigation system, arising from the placement of a sign in the Front yard Area. No sign of any kind shall be displayed to the public view from any portion of the Development except that this restriction shall not apply to (a) signs required by law or by legal proceedings (e.g. notice of foreclosure or building permit), (b) signs which by law cannot be prohibited, (c) a single sign of customary and reasonable dimension and design, complying with the Rules and reasonably located on a Lot advertising the Unit for sale or rent (d) a single identification sign which has been approved by the Board located on a Lot identifying the number or address of the Lot, (e) signs approved by the Board located at or near any entrance to the Development identifying the Development, (f) signs required for traffic control and regulation of streets or open areas within the Development, (g) signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association, and (h) such other signs as the Board, in its discretion, including alarm company signs, may approve provided that the Board may adopt limitations on such other signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location. All permissible signs must be in good condition. Signs shall not be faded or cracked. It is the express purpose and intent of this section to permit the Association's regulation of signs within the Development to the greatest extent permitted by law.
- 4.10 Garage Sales. The use of Front Yard Areas, Driveways, Common Areas, Units or garages for garage sales or for more than two (2) days within any twelve (12) month period is prohibited.
- 4.11 Garbage and Trash Disposal. No rubbish, trash, or garbage shall be allowed to accumulate outside of the exterior of any Unit on any Lot. Any trash that is

accumulated by an Owner outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers located either in a Unit's garage or in the Backyard and shall be screened from view as much as is practicable. Any accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Lot to a public dump or trash collection area by the Resident at his or her expense. The Association shall be entitled to impose Enforcement Assessment or Reimbursement Assessment for the collection of trash disposed in a manner inconsistent with this section. The Association may place and maintain trash receptacles at the Recreational Facility for common use. No trash or trash container shall be placed curbside unless it is scheduled for pick-up within twenty-four (24) hours. No trash shall be burned out of doors. No dumpster or similar large trash container shall be placed on a Lot or in Fieldstone except as may be permitted by the Rules.

4.12 Mechanical Devices. The installation or maintenance of mechanical devices not a part of, or replacement for, original construction, on the roof or exterior surface of any Buildings is prohibited, if such device is visible from the street or other Lots except as provided for in this Declaration. The Board may grant waivers, exceptions, or variances of this prohibition if such waivers, exceptions, or variances are appropriate in light of technological or similar changes and are otherwise consistent with the purposes of this Declaration.

4.13 Vehicle Repair. The parking or placement of any vehicle or other mechanical equipment for the purpose of repairs or reconstruction is prohibited except within a garage. In no case are unsightly, inoperable, or damaged vehicles permitted on driveways or on Common Area.

4.14 Parking and Garages.

4.14.1 Parking on Fieldstone Drive. Fieldstone Drive may be used for ingress and egress by pedestrians, human-powered vehicles, or motor vehicles, and for the parking of vehicles where permitted. The Board may regulate the parking on Fieldstone Drive by Rule and may prohibit uses not explicitly granted by this Declaration. Parking on Fieldstone Drive overnight is prohibited unless authorized by Rule.

4.14.2 Parking on Driveways. Residents may park one vehicle on Shared Driveways in accordance with Board rules. Residents may park two vehicles on Driveways that are not shared. Vehicles shall not be parked in such a way that they encroach on a sidewalk. The Board may adopt rules to further elaborate upon and implement the provisions of this section.

4.14.3 Parking Near the Pool. Residents and their guest may park in the parking

spots near the pool except as provided for in the Rules.

4.14.4 Restrictions on Nonstandard Vehicles: Mobile Homes. The placement, parking, or maintenance of mobile homes, motor homes, trucks (not including pick-up trucks), commercial vehicles, campers, boats, boat trailers, vehicles exceeding an exterior length of two hundred and twenty-five inches (225"), vehicles exceeding three (3) tons in weight, or similar vehicles is prohibited, except: (a) within garages or areas screened from adjoining Lots and streets; (b) where required temporarily for the construction, repair, refinishing, or maintenance of any part of the Development; (c) for moving vans being loaded or unloaded provided that such moving vans are within the size and weight limitations established by law or by the Rules; and (d) when authorized by the Board. The Board by Rule may establish reasonable timed limits and frequency, per month or per year, for the parking of any non-standard vehicle and may prohibit overnight parking of such vehicles. Any use of motor vehicles, for sleeping or other residential use is prohibited.

4.14.5 Garage Maintenance. All garages shall be maintained in a safe condition and garage doors shall be maintained in a closed position except as necessary to permit ingress and egress of vehicles or to clean, work in, or ventilate the garage.

- 4.15 Accessory Structures.** The use of trailers, tents, shacks, garages, or other outbuildings or structures as a temporary or permanent Unit is prohibited.
- 4.16 Backyard Structures.** No structure that is visible from the Common Area or adjoining streets including, but not limited to gazebos, sheds, tree houses, children's play equipment such as swing sets, or other similar structures shall be erected or maintained in the backyard of a Unit, except with the prior approval of the Board. The Board may establish rules regulating the maximum height of structures in the backyards of Units.
- 4.17 Accumulation on Lots.** All weeds, rubbish, debris, manure, composting or decaying vegetation material, and other unsightly objects or materials of any kind shall be removed from Lots whether or not improved and shall not be allowed to accumulate on any Lot. This subsection shall not be construed to prohibit refuse containers, woodpiles, storage areas, or machinery and equipment related to yard care and maintenance, provided such materials are screened from the view of adjoining streets, Lots, and Common Areas and are protected from disturbance.
- 4.18 Motorcycles; Bicycles; Trail Bikes; Off-Road Vehicles.** The placement overnight of the following vehicles, except within garages, is prohibited: motorcycles, trail bikes, off-road vehicles, or bicycles except that bicycles may be placed in the bike rack near the pool.

4.19 Bicycles and Personal Property Placement. The placement of bicycle or personal property on porches or in the Front Yard Area or on driveways is prohibited except as provided for in the Rules.

4.19.1 Household Pets. No animals, reptiles, rodents, livestock or poultry shall be kept in any Lot or elsewhere within the Development except for two (2) domesticated pets (e.g., dogs or cats) that do not exceed 150 pounds per animal. Pets (a) may not be kept, bred or maintained for any commercial purposes, (b) must be maintained under reasonable control at all times, and (c) must be kept in conformance with Local Law. This provision shall not apply to fish in an aquarium or small caged animals, such as birds kept within the Lot at all times.

4.19.2 Dogs in Common Area. While in the Common Area, dogs must be restrained on a leash held by a responsible person capable of controlling it. Dogs may not be tethered anywhere on Common Area under any circumstance.

4.19.3 No Dangerous or Vicious Animals. The Board shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person, or to require the removal of a vicious or dangerous animal.

4.19.4 Owner's Responsibility for Pets. Each Owner or Resident shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by their pets or the pets of their guests.

4.19.5 The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this section. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants or guests. Each Owner and Resident shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests or tenants.

- 4.19.6 Pet Rules. The Board may adopt and enforce pet rules, which shall be Rules, in addition to the provisions of this section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area.
- 4.20 Clotheslines. The erection or maintenance of outside clothes lines is prohibited, except within fenced yards so as to not be visible from any portion of the Common Area or the backyard of another Lot. The Board may modify this section by adoption of a Rule.
- 4.21 Development or Merger of Lots. No Lot may be further subdivided, nor may more than one Lot be combined into a single parcel of land, without the approval of the Board.
- 4.22 Lighting. The installation of any exterior lighting whose source is visible from neighboring Lots is prohibited, with the exception of security lighting, and except with the prior written approval of the Association, and except for ordinary non-directional bulbs that: (a) do not exceed one hundred fifty (150) watts for all light bulbs in a single fixture; and (b) are white or yellow in color. This provision does not prevent temporary holiday lighting decorations provided that such holiday lighting must be removed within fourteen (14) days following the holiday for which it was installed, or motion lights necessary for security lighting.
- 4.23 Mailboxes and Newspaper Tubes. No exterior newspaper tubes or mailboxes are permitted in the Development except for the community mailboxes maintained by the Association near the pool.
- 4.24 Mining. Mining, quarrying, drilling, boring, or exploring for or removing natural subsurface material is prohibited.
- 4.25 Oil Trays. The placement, use, and maintenance of oil trays and other containers on driveways, including Driveways shared by adjoining Driveway Lots is prohibited. Any oil spots on a driveway shall be immediately removed by the Owner or Resident whose Unit is served by such driveway.
- 4.26 Storage. Storage of any of the following items or materials is prohibited: flammable, explosive, radioactive or hazardous materials or items that endanger the safety of Units and Common Areas, or may cause an increase in insurance rates to the Association or to any other Owner. Barbeque units are prohibited in front porch areas.
- 4.27 Storage on Driveways. No Driveway or any part of a Lot at the end of the driveway shall be used to store any items provided that the Board may, by Rule, allow temporary storage on driveways such as for moving furnishings, equipment, and supplies into and out of the Development or into a Unit.

- 4.28 Deleted
- 4.29 Insects and Rodents. Doing any act, including leaving food and garbage exposed, which attracts ants, termites, rodents, or other pests onto or into any building within the Development is prohibited.
- 4.30 Violations of Law. Any activity that violates Local Law is prohibited.
- 4.31 Storage in Front Yards. No Resident shall use any part of a Front Yard for storage.
- 4.32 Front Porches. The enclosure of Front Porches is prohibited. The Board may develop rules regarding what is allowed on Front Porches.
- 4.33 Central Gas Service. The Development includes the Tank Storage Site, which is improved with a propane gas tank facility. The Central Gas Service is established for the purpose of convenience and safety of the Owners and Residents, and for Fire prevention purposes. Declarant has constructed the Development to provide for a central propane gas distribution system serving each Lot and has contracted with a utility gas service installer and distributor to provide service to each lot from such gas system and will provide a copy of the gas service contract ("Gas Contract") to each purchaser and Owner of a Lot. Owners and Residents are put on notice of such central gas distribution system for the use of each Lot. Owners and Residents shall not install or provide for the installation of any individual propane tanks, and they are subject to the right of the central gas system service installer and provider to enter Lots to read gas meters and otherwise perform its functions under the Gas Contract.
- 4.34 Use of Common Area. The Common Area is reserved equally for all Owners for the normal uses associated with: (a) any open space and recreational purposes allowed by the Governing documents over the Recreational Facility; (b) ingress and egress by vehicles to and from Lots over the Private Street; (c) visual enhancement of the Development with respect to Front Yard Areas, the Parcel E Wall, the Bret Harte Drive Fence, the Parcel E Landscaping, the Parcel E Block Wall, and the Entry Sign; and (d) use of any service and utility apparatus, including without limitation the Tank Storage Site.
- 4.35 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will (a) cause substantial undue hardship to the Owner, or (b) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

- 4.35.1 The Board, in its sole discretion, shall make an initial determination of whether or not the variance request on its face meets the requirements set forth in this section. If the Board determines that the variance request does not meet the requirements set forth in this section, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance request does on its face meet the requirements set forth in this section, the procedures set forth in the remainder of this section shall be followed.
- 4.35.2 Provided the Board determines that the variance request does on its face meet the requirements set forth in this section, the Board shall conduct a hearing on the variance within sixty (60) days of the receipt of the written request for a variance. No decision regarding the request for variance shall be made until the conclusion of the hearing.
- 4.35.3 After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

5 RENTING AND LEASING OF LOTS

- 5.1 Rental Restriction. It is the intent of this Declaration to fully implement the provisions of the Second Amendment to Fieldstone Planned Development Declaration of Restrictions, as recorded on June 10, 2014, as Document Number 2014-5612 (the "Second Amendment"), which amended Section 6.03 to the Original Declaration.
- 5.1.1 Purposes. In order to: (a) protect the value of the Lots in the Development; (b) preserve the character of the Development as a community of owner-occupied residences; (c) prevent the Development from assuming the character of tenant-occupied Lots; (d) ensure that those who live within the Development are committed to enhancing property values; (e) retain the Development's ability to comply with eligibility requirements for financing in the secondary mortgage market; and (f) assure the Association's ability to purchase insurance at the lowest possible price, the rental or leasing of each Lot shall be restricted in accordance with the provisions of this Declaration.
- 5.1.2 Rental Restriction. No Owner shall rent or lease his or her Lot if, by leasing or renting the Lot, the total number of Lots leased or rented within the Development, including the Lots subject to the grandfathering

provision provided, below, will exceed thirty-five percent (35%), which is sixteen (16) Lots of the total number of Lots within the Development. For purposes of this section, any Lot which is owned by a revocable living trust, or which is owned by one or more trustees of a revocable living trust, shall be deemed not to be a leased or rented Lot when it is occupied by one or more persons who are the trustor(s), trustee(s), or beneficiaries of the trust.

5.1.3 Grandfathering Provision. The restriction set forth in this section shall not apply to Owners of Lots who took title to their Lots prior to June 10, 2014 (the "Effective Date"). All Owners who take title to their Lots after the Effective Date shall be subject to the restriction set forth in this section except as otherwise provided in California Civil Code Section 4740, or successor statute.

5.1.4 Good Standing. Only Owners who are current in payments of all assessments and other charges owed to the Association shall be eligible to lease or rent his or her Lot.

5.2 Rental and Leasing Requirements as to All Lots.

5.2.1 Terms of Lease and Rental Agreements. The term of any lease or rental agreement shall be for a period of not less than thirty (30) days. Any Owner leasing or renting a Lot shall provide the tenants or lessees with copies of the Governing Documents, failure of which shall constitute a violation of such documents. No Owner shall be permitted to lease or rent his or her Lot for transient or hotel purposes. Any lease or rental of any Lot shall be in a writing provided to the Association which written agreement shall expressly provide:

5.2.1.1 The tenant shall agree to comply with all provisions of the Governing Documents and with all Rules;

5.2.1.2 Any violation of any provisions of the Governing Documents or the Rules shall constitute a breach and default of the terms of such lease or rental agreement;

5.2.1.3 The Owner shall transfer all access control devices including any fobs, key cards and keys to the tenant and shall not be entitled to use the Common Areas or Recreation Facilities other than to enter the community to inspect the Owner's Lot or as required by the lease; and

5.2.1.4 Any other terms that may be required by the Association's Rules.

5.2.2 Procedure for Renting or Leasing Lots.

5.2.2.1 Form; Application. Any Owner who is subject to the rental

restrictions provided for above and wants to lease or rent his or her Lot, shall submit a written application, on a form as provided by the Association, along with a copy of his or her proposed lease or rental agreement to the Association at least thirty (30) days prior to the proposed lease or rental start date of his or her Lot.

5.2.2.2 Such application shall include: (a) the Owner's name and mailing address and address of the Lot proposed to be leased or rented; (b) the proposed lease or rental term, which such term shall be no less than thirty (30) days; and (c) such other information as the Association may from time to time require.

5.2.2.3 No lease or rental may be entered into prior to the Owner receiving the Association's approval of his or her application. Once an application is approved, the Owner must provide the Association with a copy of the signed lease or rental agreement.

5.2.2.4 Grandfathered Owners. Within thirty (30) days, Owners who are grandfathered under the provisions of this Declaration, above, and are renting as of the Effective Date, or who rent after the Effective Date, shall provide the following information to the Association: (a) the Owner's name and mailing address and address of the Lot that is being leased or rented; (b) the lease or rental term, which term shall be no less than thirty (30) days; and (c) such other information as the Association may from time to time require. This information is being required to provide the Association with information regarding the rentals in the Development.

5.2.2.5 List of Leased or Rented Lots. The Association shall keep a list of all Owners that are leasing or renting their Lot. At a minimum, the list shall include the Owner's name, mailing address, Lot address, the date that the Association approved the Owner's application, for Owners who are grandfathered, the date that they purchased their Lot, and term of lease or rental.

5.2.2.6 Priority of Applicants. The Association shall establish and maintain a priority list, identifying the Owner name, mailing address, Lot address and date the written application or request of each Owner to rent or lease his or her Lot was submitted to the Association and such list shall be divided into a currently renting section and a waiting list section (the "Priority List").

5.2.2.7 With respect to those Lots subject to the rental restriction under the provisions of this Declaration, as the number of Lots rented or leased falls below the thirty-five percent (35%) limitation, the Owner whose name is

at the top of the waiting portion of the Priority List shall be notified, in writing, of his or her right to rent or lease and shall be given sixty (60) days to obtain, and forward to the Association, a copy of a written, signed lease or rental agreement, indicating the tenants' or lessees' acknowledgment that they will abide by the terms and provisions of the Declaration, Bylaws, and Association Rules.

5.2.2.8 If this Owner fails to supply such agreement to the Association within sixty (60) days of notification by the Association of the Board's approval to lease or rent, such Owner's name shall fall to the bottom of the waiting list and the next Owner on the waiting list will be notified, in writing, by the Association of the Board's approval to lease or rent, and also be given sixty (60) days to obtain, and forward to the Association, a copy of a signed, written lease or rental agreement as described above. If this is not done, the next Owner on the list will be notified and so on, until all of the names on the waiting list have been given the opportunity to lease or rent his or her Lot.

5.2.2.9 Continuation of Right to Lease. Once the Association has granted an Owner the authority to lease or rent the Owner's Lot, that Owner has the right to continue leasing or renting the Lot to consecutive tenants or lessees as long as (a) the Owner and the tenants or lessees comply with this Governing Documents, and (b) the Owner provides the Association with a copy of the lease or rental agreement with tenants or lessees prior to the tenants or lessees' occupancy of the Lot.

5.2.2.10 Failure to provide the Association with lease or rental agreements of consecutive tenants or lessees shall subject the Owner to the Association's enforcement rights found under the Governing Documents pertaining to disciplinary actions.

5.2.2.11 If a Lot is not occupied under a lease or rental agreement for a period in excess of ninety (90) days, the Owner must re-apply for approval from the Association to lease or rent the Lot if the Lot is grandfathered under provisions of this Declaration. If the Lot is being rented under the rental restriction in provisions of this Declaration, and the Lot is not occupied under a lease or rental agreement for a period in excess of sixty (60) days, the Owner shall fall to the bottom of the waiting list section of the Priority List.

5.2.2.12 Meeting with the Board. Each Owner may upon written request delivered to the Association, appear in person before the Board and to discuss the request to lease or rent his or her Lot.

5.2.2.13 Board Decision Final. Decisions of the Board pursuant to this section shall be final and conclusive.

5.2.3 Variances From Rental Restriction. With respect to Lots which are subject to the rental restriction in provisions of this Declaration, the following shall apply:

5.2.3.1 The Board may, in its sole discretion, grant variances from the restrictions set forth in this section, in cases of demonstrated hardship, which circumstances may include, but are not limited to: (a) the period of probate following the death of the Owner; (b) the decision of an employer to relocate an Owner to another community; or (c) an illness or disability that prevents the Owner from personally occupying the Lot. No waiver shall be granted to an Owner whose hardship is a result of the Owner's failure to understand this rental restriction.

5.2.3.2 If permission has been granted by the Board for demonstrated hardship such variance shall be of relatively short duration, such as until: (a) probate proceedings are concluded; (b) the Owner has relocated to the community of his or her employment and has had a reasonable time to sell his or her Lot; or (c) the Owner has either recovered from the illness or disability or, in the alternative, has had a reasonable time to sell his or her Lot. Exceptions authorized by the Board shall be subject to such limitations, requirements and conditions as the Board in its complete discretion deems appropriate.

5.2.4 Rules and Regulations. The Board shall have the power to create and amend Rules to implement, enforce, and further define the provisions of this section.

5.2.5 Rental Fees. In consideration of the increased costs that the Association incurs as a result of monitoring rental Lots, the Association may charge a fee to those Owners who are renting their Lots. The Board shall adopt rules to set the amount of any such fee.

5.2.6 Owner Responsibility. Each Owner leasing or renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenants or lessees within the Development and for each tenant's and lessee's compliance with the provisions of the Governing Documents as they may be amended from time to time. The failure of any tenant or lessee to comply with the terms of the Governing Documents shall constitute a default under such lease or rental agreement and shall entitle the Owner, or the Association at the Owner's sole cost and expense, to terminate the tenancy.

- 5.2.7 Violations. If the Association files legal action to gain an Owner's compliance with the Declaration, the Association, as prevailing party, shall be entitled to recover all of its attorney's fees and costs. Prior to the filing of any court action seeking declaratory or injunctive relief to enforce this provision (including either such action coupled with a claim for monetary damages not in excess of five thousand (\$5,000) dollars), the Association and Owner shall comply with the provisions of Civil Code Sections 5925 et seq. relating to alternative dispute resolution.
- 5.2.8 Association's Enforcement Rights. In addition to all other remedies available, in the event an Owner rents or leases his or her Lot: (a) in violation of this section; (b) in violation of rental restrictions set forth above; or (c) a tenant's or lessee's conduct involves damage or misuse of any Common Area or constitutes a nuisance to Owners or residents, the Association shall be entitled to maintain an eviction action against the tenant or lessee to the same extent as the Owner of the Lot with the Association being deemed a third party beneficiary of any lease or rental agreement involving any Lot within the Development.
- 5.2.9 Indemnification. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a lease or rental agreement or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, managers, and agents and shall hold them harmless for any cost, loss, claim, or damages of any kind, including, but not limited to attorneys' fees arising out of the conduct or presence of the tenants of the Lot, including any such conduct arising or alleged to have arisen out of the enforcement or non-enforcement by the Association of the Governing Documents against such tenants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such Owner, including evictions provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as an Individual Assessment.

6 HOMEOWNERS ASSOCIATION

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

Governing Documents.

- 6.2 **Membership.** Each Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 6.3 **Voting.** Only Members in Good Standing shall be entitled to vote, and only one (1) vote shall be cast for each Lot, all as more particularly specified in the Bylaws.
- 6.4 **Board of Directors.** The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of Directors shall be as established in the Bylaws, and the Directors shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.
- 6.5 **Association Rules.** The Board shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules," as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to (a) use of the Common Area, (b) pets, (c) signs, (d) collection and disposal of refuse, (e) minimum standards for maintenance of property, (f) use of the Recreation Facilities, (g) parking and traffic regulations, (h) rental or leasing of Lots, (i) enforcement of the Governing Documents including the imposition of fines, and (j) any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.
- 6.6 **Committees.** The Board may create such Committees as it deems useful in carrying out its obligations. The membership, powers and rules of the Committees are entrusted to the discretion of the Board as laid out in more detail in the Bylaws.
- 6.7 **Manager and Other Personnel.** The Board shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.
- 6.8 **Insurance.** The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.
- 6.9 **Capital Improvements.** The Board shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital Improvements

upon the Common Area.

- 6.10 Association Property. Subject to provisions of the Governing Documents, the Board of Directors shall have the power to sell, transfer, lease or otherwise dispose of the Association's property.
- 6.11 Dedication or Transfer of Common Area to Public Agency or Utility. The Board of Directors shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility.
- 6.12 Borrow Money. The Board of Directors shall have the power to borrow money in the name of the Association, in accordance with the Bylaws.
- 6.13 Mortgage of Association Property. The Board of Directors shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.
- 6.14 Mergers and Consolidations. The Association may (a) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (b) annex additional property to the Development, provided that the approval of an Absolute Majority of Members is obtained.
- 6.15 Dissolution. So long as there is any Lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the consent of all Members must be obtained for the Association to (a) transfer all or substantially all of its assets, or (b) file a certificate of dissolution.
- 6.16 Limitation of Liability. Neither the Association nor its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as (a) the establishment of the Association's annual financial budget, (b) the funding of Association reserve accounts, (c) the discharge of the Association's maintenance, repair and replacement obligations, (d) the enforcement of the Governing Documents, and (e) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

7 ASSESSMENTS, LIENS AND OTHER CHARGES OR FEES

- 7.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance

of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (a) Annual Assessments, (b) Special Assessments, (c) Reimbursement Assessments, and (d) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for. Each Assessment levied by the Association under this article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Lot shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

7.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Lot to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Lot notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

7.3 Purpose of Assessments. The Assessments levied by the Board shall be used

exclusively for (a) managing and operating the Development, (b) conducting the business and affairs of the Association, (c) promoting the recreation, health, safety, welfare, benefit, and interests of the Owners in relationship to the Development, (d) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development, (e) enforcing the Governing Documents, or (f) otherwise benefitting the Owners.

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

7.5 Annual Assessment.

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

7.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Lots by dividing the amount by the number of Lots.

7.5.3 Payment of Annual Assessments. Unless the Board designates otherwise, Annual Assessments may be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

7.5.4 Increases in Annual Assessment. Pursuant to California Civil Code Section 5600 et seq., except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

7.6 Special Assessments.

- 7.6.1 **Purpose of Special Assessments.** If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost. The Board may also levy a Special Assessment for capital improvements within the Common Area. The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for routine maintenance, repair and replacement of Common Facilities through Annual Assessments.
- 7.6.2 **Allocation of Special Assessments.** Special Assessments shall be allocated and assessed equally among all Lots in the Development, except any Assessment against an Owner as a result of a deficiency in insurance proceeds or condemnation awards as provided in this Declaration.
- 7.6.3 **Approval of Special Assessments.** Except in the case of an emergency situation as defined in California Civil Code Section 5600 et seq., in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.
- 7.7 **Reimbursement Assessments.** The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance. The Association shall also levy a Reimbursement Assessment in the event that the Association has expended funds performing emergency repairs as authorized by this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

- 7.8 **Enforcement Assessments.** The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 7.9 **Failure to Fix Assessments.** The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 7.10 **Offsets.** All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 7.11 **Payment Under Protest.** If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits set forth in the Code of Civil Procedure Sections 116.220 and 116.221, or comparable successor statute, the Owner may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court. Nothing in this section shall impair the Association's ability to collect delinquent assessments as provided by California law.
- 7.12 **Delinquent Assessments.** Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Lot by judicial or non-judicial foreclosure, except as prohibited by law. Except as

prohibited by law, upon any delinquency in payment, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

- 7.13 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the California Civil Code, and does further grant to the Board, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy such lien, except as prohibited by law. The Association or any Owner may purchase the Lot at the sale.
- 7.14 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall Record, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 7.15 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this article shall have priority as of the date of Recording of the original declaration applicable to the Development over all other liens and encumbrances applicable to the Lots. Notwithstanding the preceding, a lien for Assessments which have become due and payable prior to the sale of a Lot pursuant to a decree of foreclosure of a First Mortgage, or pursuant to a power of sale contained in any such First Mortgage, shall be subordinate to the lien of any First Mortgage Recorded against the Lot. Such foreclosure sale shall not relieve the Lot from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.
- 7.16 Association Funds. All Association accounts shall be maintained in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts.
- 7.17 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption laws of the State of California in effect at the time any

Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this article.

7.18 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Additional Charges, and liens created herein:

7.18.1 All property dedicated to and accepted by the County or other local public authority and devoted to public use.

7.18.2 Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure. Such exemption shall be applicable only during the period in which the Association is Record Owner of such Lot.

7.18.3 All Common Area.

7.19 Owner Assignment of Rents. Each Owner hereby presently assigns to the Association, absolutely and regardless of possession of the Lot, all rents and other monies now due or which may hereafter become due under any lease, agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made, for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current.

8 DAMAGE, DESTRUCTION AND EMINENT DOMAIN

8.1 Reconstruction Fund. Upon the damage or destruction of any part of the Common Area, the Board shall create and maintain a Reconstruction Fund. The Reconstruction Fund shall comprise any:

- (a) insurance proceeds, and any amounts recovered as a direct settlement from a third party;
- (b) accumulated reserves for repair or replacement of the damaged Improvements;
- (c) Reconstruction Assessments levied pursuant to this Article; and
- (d) damages recovered from an action brought by the Association Pursuant to this Declaration entitled "Recovery of Damages for Damage or Destruction to Common Area". The funds in the Reconstruction Fund do not need to be segregated in a separate bank account. The amount in the Reconstruction Fund

shall be disbursed in accordance with the provisions in this Declaration entitled "Disbursement of Reconstruction Fund".

- 8.2 Reconstruction Assessment Defined. "Reconstruction Assessment" means those assessments levied against all or some of the Owners to pay the costs attributable to the damage or destruction of all or any portion of the Common Area. Such Reconstruction Assessments shall be considered Special Assessments for the purposes of collection remedies. The allocation of such Reconstruction Assessments shall be as provided for in this Declaration entitled "Damage or Destruction to Common Area".
- 8.3 Damage or Destruction to Common Area. If there is damage or destruction of the Common Area then:
- 8.3.1 Cost Does Not Exceed Assessments. If the cost of replacing or rebuilding does not exceed the amount in the Reconstruction Fund by more than the amount the Board could assess without the Owners' vote under the provision of this Declaration entitled "Special Assessments", and the Board votes to repair and rebuild, then the Association shall contract to repair or rebuild the damaged areas according to the original plans and specifications, with such changes required by governmental agencies having jurisdiction, and shall levy a Reconstruction Assessment on all Owners, on the same basis as the Regular Assessments, in the amount, if any, by which the cost of repair or rebuilding exceeds the amount in the Reconstruction Fund.
- 8.3.2 Cost Exceeds Assessments. If the cost of replacing or rebuilding does exceed the amount in the Reconstruction Fund by more than the amount the Association could assess without the affected Owner's vote under the provision of this Declaration entitled "Special Assessments" or if the Board does not wish to repair and rebuild, the question of repairing and rebuilding shall be decided by a vote of the Owners and a disapproval by at least fifty-one percent (51%) of the Owners of the necessary assessment to replace or rebuild the damaged or destroyed Improvements shall be the affected Owners' decision not to replace or rebuild in which case the Association shall clear the property and place it in a neat and attractive condition. The consent of all Owners, whose right to access to their Lots over Common Area streets is impaired by a decision not to rebuild, is required in such vote.
- 8.4 Recovery of Damages for Damage or Destruction to Common Area. The Association may commence and maintain actions for the recovery of any damages if any part of the Common Area and related facilities is damaged or destroyed. This provision shall survive the termination of this Declaration, and any recovery minus

costs advanced by the Association shall be paid into the Reconstruction Fund, designated, and paid out as provided for under this Article.

8.5 Disbursement of Reconstruction Fund. The Reconstruction Fund shall be disbursed to pay for any costs of replacing, rebuilding or removing and placing Common Area in a neat and attractive condition as provided in the provision of this Declaration entitled "Damage or Destruction to Common Area". Any unused amount in the Reconstruction Fund shall be first used to make up any deficiency in the Maintenance Reserve Fund and then to the Operating Fund.

8.6 Eminent Domain.

8.6.1 Action by Association. If there is a taking of all or a portion of the Common Area and related facilities, the Association shall negotiate or settle with the condemning authority for the acquisition of all or part of such Common Area, subject to the rights of affected Owners to so negotiate, litigate, and settle for any loss or diminution to their Lots. This provision shall survive the termination of this Declaration, and any recovery minus costs advanced by the Association in such settlement or negotiation, including any condemnation award or settlement, shall be paid into the Operating Fund.

8.6.2 Repair of Common Area. If there is a taking of a portion of the Common Area and related facilities, the Association has the authority to apply any or all of the condemnation award to the repair or rebuilding of the portion of such Common Area damaged from the severance so that the remaining Common Area is kept in a neat and attractive condition.

8.6.3 "Taking Defined". A "taking" for the purpose of this Section, is a taking of the Common Area under the power of eminent domain, or a conveyance of the Common Area by the Association in settlement of a proposed taking by eminent domain.

9 MAINTENANCE OF PROPERTY

9.1 Association Responsibilities. The Association shall have the following maintenance responsibilities:

9.1.1 Maintenance of Common Area. The Association shall maintain, repair and replace all of the Common Area and all Improvements thereon, including, but not limited to:

9.1.1.1 Any Common Facility or other Improvement upon the Common Area as necessary in accordance with the design, finish or standard of construction of such Improvement;

9.1.1.2 The Landscaping including the Landscaping in the Front Yard

Areas (as described more fully below) and those parcels for which the Association bears the responsibility. The Association's responsibility regarding Landscaping includes, without limitation, the trimming, fertilizing, watering, weeding and replacement of all plants as well as the maintenance, repair and replacement of the irrigation system serving the plants;

9.1.1.3 The Association shall maintain the Private Street in good operable condition, including the road surface, curbs, gutters, street lights, sidewalks, and all utility service lines and equipment other than water service, sanitary sewer service, storm drainage facilities and other utilities that are accepted for public governmental or utility service maintenance, or that are maintained by Owners pursuant to the provision of this Declaration entitled "Maintenance of Lots";

9.1.1.4 The Recreation Facility including the pool, barbeque and associated structures and equipment; and

9.1.1.5 The signs necessary for the identification of the Development and of streets, the regulation of traffic, including parking, the regulation of the Common Area and Common Facilities.

9.1.2 Association Maintenance of Lots and Units. The Association shall have the following limited maintenance, repair, and replacement responsibilities with respect to the Lots and Units:

9.1.2.1 Driveways and Roofs. The Association is responsible for the maintenance, repair and replacement of Unit Driveways and Roofs (including flashing, gutters or downspouts).

9.1.2.2 Paint and Other Finishes. . The Association is responsible for the application, maintenance and repair of all exterior paint, caulking or protective coatings..

9.1.2.3 Limitation on Association Responsibility. The Association is not responsible for the maintenance, repair or replacement of any part of a Building or Unit that is not specifically listed above provided, however, that the Association is responsible for the repair or replacement of those parts of a Unit or Building that are damaged or destroyed because of the Association's failure to meet the responsibilities provided for in this Article including the failure of the Association to properly maintain roofs or exterior painting. Notwithstanding the foregoing, the Association is not responsible for cracks or other damage to stucco walls. No maintenance, repair or replacement undertaken by the Association shall act as a waiver of the limitation of the Association's duty or responsibility.

9.1.2.4 Front Yard Landscaping. The Association shall maintain, repair and replace the Landscaping in all Front Yard Areas. Each owner shall provide all water needed by the Association to carry out the Association's responsibilities as to that Owner's Lot. The Association has the right to control the amount of water used to maintain the Landscaping in the Front Yard Areas subject to Local Law. The Association may provide access to the irrigation system serving the Owner's Lot. Owners are responsible for any loss to Landscaping in the Front Yard Area caused by that Owner's refusal to provide water needed by the Association. Owners and Residents are not permitted to add or remove Landscaping in the Front Yard Areas without the prior permission of the Board.

9.1.2.5 Entry Sign Maintenance. The Association shall maintain, repair, replace and reconstruct the Entry Sign Improvements and Landscaping, in located on Lot 23. The Owner of Lot 23 covenants not to construct, repair, maintain or reconstruct any Improvement in such area including any utility line or service equipment serving such Lot, unless such Owner obtains the prior approval of the Association.

9.1.3 Liability for Damage. If any of the maintenance or repair work referred to in this section is necessitated by the acts of the Owner or Residents, guests or lessees, the cost of such restoration or repairs shall be charged to the Owner as a Reimbursement Assessment.

9.2 Owner Responsibilities. As laid out in more detail below, Owners are responsible for the maintenance, repair and replacement of all parts of their Lot or Building except those parts for which the Association is specifically given such responsibility by the Governing Documents.

9.2.1 Except to the extent that specific maintenance, repair and replacement responsibilities with respect to the Lots and Units are expressly and clearly assigned to the Association in provisions of this Declaration, each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot, the Unit, including the interior of the Unit and all other Improvements thereon. Such maintenance, repair and replacement shall include, without limitation, the following:

9.2.1.1 All siding, stucco, trim and other parts of the walls of a Unit;

9.2.1.2 All doors, windows, screens, air conditioning units, heating, plumbing, electrical, water heater or other mechanical systems, water and sanitary sewer, and walkway or steps serving only that Unit.

9.2.1.3 All Landscaping on the Owner's Lot except for the Landscaping in the Front Yard Area.

9.2.2 Party Walls. Party walls shall be regulated in accordance with the following.

9.2.2.1 General Rules of Law to Apply. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

9.2.2.2 Sharing of Repair and Maintenance Cost. The cost of maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

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

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

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

9.2.2.6 Party Wall Easements. In all cases where a structural wall constituting a portion of a single Unit, or a structural wall constituting a common wall for two Units, is located upon the dividing line between adjacent Lots, the Owner of said adjoining Lot shall have reciprocal mutual nonexclusive easements for the maintenance of said wall, the reconstruction of said wall in the event of the partial or total destruction of the same, drainage associated with said wall or the Unit of which said wall is a part and an easement to accommodate the foundation or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the Unit or Units on said Lot or Lots. The Owner of a Lot having a structural wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of said wall without the consent and permission of the Owner of the

adjoining Lot upon which the Unit of which said wall is a part is situated.

9.2.3 Alterations to Original Construction. The Owner of each Lot shall be solely responsible for the maintenance, repair, and replacement of any portion of the Lot, Units, or the Improvements thereon, which were modified, added to or otherwise altered by an Owner from its original construction when the Unit on the Lot was first built.

9.2.4 Pest Control. The Owner shall be responsible for pest control for his or her Lot and Unit. Where any maintenance, repair, or replacement on a Lot, including the Unit and other Improvements thereon, is made necessary by the presence of wood-destroying pests or organisms, the Owner shall be solely responsible for such maintenance, repair, or replacement.

9.3 Responsibility for Fence Maintenance. The responsibility for the maintenance, repair and replacement of fences in the Development shall be distributed as follows:

9.3.1 Owners are responsible for the maintenance, repair and replacement of all fences that are not expressly made the responsibility of the Association.

9.3.2 The Association is responsible for the Bret Harte Fence and any other fence around the perimeter of the development. The Association is also responsible for any fence wholly within the Common Area such as the Fence around the pool.

9.3.3 The Association is responsible for maintenance, repair and replacement of the Bret Harte Fence and any other Perimeter Fence. The Association is responsible for any fence separating the Common Area from a Lot such as the fence around the Recreational Facility. The Association is responsible for any Party Fence.

9.4 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot, including landscaping, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control.

9.5 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in this Declaration, in the event an Owner fails to perform such work within thirty (30) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and

charge the cost thereof to the Owner as a Reimbursement Assessment.

- 9.6 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the act or omission of an Owner, members of any Owner's household, or an Owner's tenants, Contract Purchaser, guests, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.
- 9.7 Authority for Entry of Lot. The Association or its agents may enter any Lot or Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Association is responsible or which it is authorized to perform, including without limitation the authorization provided in this Article. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice.
- 9.8 Association Liability. Except as specifically provided in provisions of this Declaration, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the gross negligence of the Association, its employees, contractors, or agents.
- 9.9 Board Discretion. The Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.
- 9.10 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

10 ARCHITECTURAL CONTROL

- 10.1 Submission of Plans and Specifications. Except for Improvements made, or constructed by, or on behalf of, the Association, no Improvements including without limitation Units, buildings, walls, fences, awnings, window coverings visible from the exterior, walls, landscaping, spas, screens, doors, patio covers, or other structures or improvement of any kind, shall be commenced, located, erected,

Painted or maintained within the Development, nor shall any exterior addition to, or change, or alteration therein or alteration to the finished grade elevation, be made until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Board. Notwithstanding the foregoing, Residents are not required to obtain prior Board approval for small improvements such as raised flower beds in, or changes to the landscaping of, the Resident's backyard provided that such changes or improvements do not adversely impact the ability of the Association to carry out its responsibilities or adversely affect the drainage of another Resident.

10.2 Building Standards for All Lots. In addition to the approval of the Board provided for in this Declaration, the following building standards shall apply to any and all Improvements from time to time existing or to be built on any Lot.

10.2.1 Height. No Unit shall exceed two (2) stories in height from the finished Lot, and, excluding chimneys, no Unit shall exceed thirty-six (36') feet in height from the highest level of the finished Lot.

10.2.2 Auxiliary Parking Structures. No Owner shall construct or use an auxiliary parking structure such as a car port or parking awning without the prior approval of the Board.

10.2.3 Roofs. All equipment, including solar energy equipment, used on roofs must be integrated into the roof design and color as much as is practicable as must all vent stacks and pipes. All TV antennas and receiver dishes must be installed, to the extent permitted by California Civil Code, so as not to be visible from the street in front of the Unit. No modification of the roof, including the installation of any equipment, may be undertaken without prior approval of the Board. No TV dish with a diameter or diagonal measurement greater than 36" may be installed on the roof of a Unit. No skylight may be installed. Owners are responsible for any damage resulting from the installation of equipment on a roof.

10.2.4 Finishes. No reflective finishes shall be used on exterior surfaces other than surfaces of hardware fixtures including, without limitation, the exterior surfaces of any of the following: roofs, all projections above roofs, retaining walls, doors, trim, fences, pipes and equipment. Hardware fixtures may be gold, brass, or copper, but not natural aluminum.

10.2.5 Exterior Materials. Exterior materials, other than for roofs, may be of wood, Masonite or its equivalent, stucco, copper, stone, and brick. No Improvement shall use exterior wall materials of plywood, aluminum, other metal, vinyl or other plastics, or have a plastic or vinyl finish except in the case of garage doors, unless otherwise approved by the Board. Door and window frames shall be of wood or vinyl or metal material, but in no

case in bright aluminum or other bare metal color. Security screen doors of metal and wood are permitted, provided they are painted to match the color of the house or to match the color of the door that they cover if that color is different from the color of the house. No plywood siding is permitted. Board approval is required for any exterior material, color or Improvement not specified as acceptable in this Subsection.

- 10.2.6 Color. Except for doors, the exterior of all Improvements shall be painted in white, light pastels, or earth tones. Wood may be finished in stains. No Improvement, including doors, shall be painted in black, red, purple, pink, or orange or in shades of those colors, unless installed as part of original construction of the Development; and unless otherwise consistent with the Rules. Except as provided above, all exterior finishes shall be earth tones or other subdued colors that will not clash with the exterior color of other structures. All exterior colors and finishes must comply with the Rules, except for those colors and finishes originally used by Declarant in the initial construction of the Development.
- 10.2.7 Fences. Except for the fence in the Recreational Facility, all fences visible from adjoining streets shall be of wood. Any wood fence shall be grade select, tight knot or better cedar. All wood fencing visible from the street shall be 6 feet in height unless otherwise approved by the Board..
- 10.2.8 Mechanical Systems. All air conditioning, swimming pool, and spa equipment, and other mechanical equipment located on the exterior of a Unit shall be located at ground level and be screened so as not to be visible from adjoining streets or Common Area. The construction and finish of screens and facades hiding such machinery shall conform to the overall design of the other Improvements on the Lot. This Subsection does not apply to solar energy systems, security alarm bell boxes, or to Antennae pursuant to other provisions of this Declaration.
- 10.2.9 Solar Heating. Solar heating equipment may not be installed on a Unit roof without the prior approval of the Board. Solar heating to the extent possible shall be installed and maintained so as not to be visible from streets and so as to be neat and attractive as possible. No such equipment shall have a shine or reflective finish. To the extent such equipment is located on a roof maintained by the Association, the Owner must agree to be responsible for all additional maintenance cost arising from such equipment, and to indemnify the Association and the Owner of any adjoining Unit from any loss or damage caused by such equipment.
- 10.2.10 Utility Lines. Except for high-voltage electrical lines, temporary lines used during construction and for pre-existing electrical lines installed

prior to construction of the Development by Declarant, all utility lines including, but not limited to, electrical, gas, telephone, cable television, and other communications shall be underground, except for access ports and above ground transformers.

10.2.11 General Requirements for Builders. Where adjacent Units are constructed by the same or affiliated builders, they shall be done in a variety of designs, elevations, roof configurations, colors, trim, and lot placement to avoid a sameness in appearance of adjoining Units.

10.2.12 Setbacks. All Improvements shall be constructed in accordance with either applicable building Setback requirements shown on a subdivision map or deeds executed by Declarant or on maps or plans approved by the government agency having jurisdiction.

10.2.13 New Construction. All Improvements erected on any Lot shall be of new construction, and no building constructed or manufactured off the Development shall be relocated and placed on any Lot. This Subsection shall not be construed to prohibit used brick or other materials preservative of property values, provided such materials are approved by the Board,

10.2.14 Landscaping. All Front Yard Areas shall be planted with plants approved by the Board.

10.2.14.1 No rock, gravel, mulch, bark or other non-growing ground cover shall be used in the Front Yard Areas without the prior approval of the Board. Landscaping shall be designed, with respect to both density and height, so as not to materially impair the visibility of the structure of Units from the street. Fences, trees, hedges, and mass plantings shall not exceed six (6') feet in height without Board approval. Vines shall not be planted so as to touch any exterior surface of the building, including the siding and porch railings. The majority of the area of each Lot shall be landscaped with grass or other approved ground cover, and with trees and shrubs.

10.2.15 The Board's decisions regarding Landscaping shall be guided by the Landscape Criteria, which may be updated from time to time.

10.3 Architectural Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this article by setting forth the standards and procedures for the Board review and guidelines for architectural design, placement of Units and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the

Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents. In its discretion, the Board may grant variances from specific Architectural Rules subject to such terms and conditions as it deems appropriate provided, however, that all such variances must comply with all provisions of the Governing Documents.

10.4 **Application.** Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Board may require, including without limitation samples of proposed paints and other finish materials in such sizes and formats as the Board may deem appropriate. In accordance with Governing Documents, and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to obtain the approval required by this article prior to proceeding with any Improvement, or any alteration to an existing Improvement, for which approval is required pursuant to this Article.

10.5 **Expert Review.** If at any time the Board determines that it would be in the best interest of the community for an Owner-applicant to employ an architect, licensed building designer or engineer to design or review the structural integrity of any proposed Improvement or component thereof, the Board shall so advise the Owner in writing of its determination, whereupon all plans and specifications so designated by the Board must thereafter bear appropriate evidence of such preparation or review.

10.6 **Grant of Approval.** The Board shall grant the requested approval only if:

10.6.1 The Owner shall have complied with the provisions of this Declaration;

10.6.2 The Board finds that the plans and specifications conform to both (a) this Declaration and the Architectural Rules in effect at the time such plans were submitted to the Board, unless a variance is granted from such Architectural Rules pursuant to this Article; (b) will be in harmony with the external design of other structures or landscaping within the Development; and (c) will not interfere with the reasonable use or enjoyment of any other Lot Owner of his or her property; and

10.6.3 The Board determines that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location

with respect to topography and finished grade elevations.

- 10.7 **Form of Approval.** All approvals and denials of requests for approval shall be in writing except as provided in the Governing Documents. The Board may approve a request for approval subject to the Owner's consent to any modifications made by the Board. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety. Any denial of a request for approval shall include (a) an explanation of why the request for approval was denied, and (b) a description of the procedure for Board review of the denial as set forth in this article and any applicable Architectural Rules.
- 10.8 **Time for Board Action.** The Board shall act on a request for approval within sixty (60) days from the date of receipt thereof by the Board. Any request for approval which has not been acted on by the Board within the preceding time frame shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Board by evidence in the form of either a copy of such request for approval date-stamped by the Association or by certified mail provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association or by such other evidence as the Board finds to be probative.
- 10.9 **Board Review.** This section shall only apply if the Board has delegated its obligations under this Article to a Committee. An Owner shall have a right to appeal the decision of a Committee to the Board, provided that such request shall be presented within ten (10) days from the date of the Committee's decision. If a review is conducted, (a) it shall take place during an open meeting of the Board, (b) the Board may affirm, reverse or modify the decision in its discretion and in accordance with the provisions of the Governing Documents, and (c) the Board shall notify the applicant in writing of the Board's decision within fifteen (15) days following the review.
- 10.10 **Commencement.** Upon receipt of approval by the Board, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety (90) days from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

- 10.11 **Completion.** The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one year after commencing construction thereof (or in the case of projects under construction when this Declaration is Recorded, within one year after the date of Recordation), except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this section, the Board shall proceed in accordance with the provisions of this Article, as though the failure to complete the Improvements was a non-compliance with approved plans.
- 10.12 **Inspection.** Inspection of work and correction of defects therein shall proceed as follows:
- 10.12.1 Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this article, the Owner shall give written notice thereof to the Association.
- 10.12.2 Within sixty (60) days after the receipt of such written notice, the Board may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Board finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.
- 10.12.3 If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing shall be noticed and conducted in accordance with the Governing Documents.
- 10.12.4 At the hearing, the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period determined in the discretion of the Board. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its

discretion, may grant, the Board may (a) remove the non-complying Improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment, or (b) exercise any of the enforcement rights provided in the Governing Documents.

10.12.5 If, for any reason, the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Board by evidence in the form of either a copy of such notice date-stamped by the Association's office or by certified mail receipt provided by the U. S. Postal Service acknowledging that such notice was delivered to the Association or by such other evidence as the Board finds to be probative.

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

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

10.15 Notice of Noncompliance. If any Improvements are installed within the Development that are not in conformance with this Declaration, the Association is authorized to Record a notice of noncompliance, if permitted by the County. The notice of noncompliance shall provide: (a) a legal description of the Lot affected, (b) the name of the record Owner as most recently reported to the Association, and (c) a description of the general nature of the noncompliance. If and when such Lot is brought into compliance with this Declaration, as determined by the Board, the

Association shall issue and, if permitted by the County of Calaveras, Record an estoppel certificate in accordance with this Article. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to the recordation of notices of noncompliance as set forth in this section.

- 10.16 Liability. Neither the Board nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Development; (d) the execution and filing of an estoppel certificate pursuant to this Article, whether or not the facts therein are correct; provided, however, that the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him; or (e) the execution and filing of a notice of noncompliance pursuant to this Article, whether or not the facts therein are correct; provided, however, that the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board. Every purchaser, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against the Board, its members or representatives seeking to recover any such damages.
- 10.17 Compliance with Governmental Requirements. The application to the Association, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on the Board or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.
- 10.18 Review Fee. The Board may require that the submission of plans and specifications be accompanied by a fee to defray the actual cost of the review of plans and specifications, the amount of which shall be set by the Board from time-to-time by Rule.
- 10.19 Variances. The Board may grant reasonable variances in any procedures specified in this Article to overcome practical difficulties, avoid unnecessary expense or

prevent unnecessary hardship, provided the following conditions are met:

10.19.1 The Board makes a written determination that: (a) the requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any restriction contained in the Declaration or that the proposal allows the objectives of the violated restriction(s) to be substantially achieved despite noncompliance; or (b) that the variance relates to a restriction or requirement that is unnecessary or burdensome under the circumstances; or (c) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner in the Development.

10.19.2 After hearing, the Board decides to either grant or deny the request for variance in accordance with the standards set forth in this section.

11 ENFORCEMENT

- 11.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.
- 11.2 Violation of Law. Any violation of Local Law pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of the Declaration and subject to any and all of the enforcement procedures set forth herein.
- 11.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing the members of his or her household and his or her tenants, Contract Purchasers, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.
- 11.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities, if any, or

by abandonment of his or her Lot.

11.5 Rights and Remedies of the Association.

- 11.5.1 Enforcement Rights.** The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of its discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole.
- 11.5.2 Member Not In Good Standing.** Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.
- 11.5.3 Imposition of Sanctions.** In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, Contract Purchasers, contractors or guests, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the recreational or community facilities, if any, on the Common Area. Except as provided in this Article, imposition of sanctions shall be effective only after notice and an opportunity for hearing as provided in the Governing Documents. The payment of any such fine may be enforced as an Enforcement Assessment as provided in this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by the members of such Owner's household and such Owner's

tenants, Contract Purchasers, guests or pets.

- 11.5.4 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.
- 11.5.5 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.
- 11.6 Disciplinary Rules. The Board or Rules Committee (appointed by the Board for that purpose) may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.
- 11.7 Emergency Situations. The following shall constitute emergency situations: (a) an immediate and unreasonable threat to the safety of Residents of the Development, (b) a traffic or fire hazard, or (c) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective or

disciplinary action. Hearings with respect to such corrective or disciplinary action shall be in accordance with the Bylaws.

- 11.8 Alternative Dispute Resolution. Compliance with California Civil Code Sections 5925 et seq. and Civil Code Sections 5900 et seq. shall be required with respect to any dispute subject to such sections.
- 11.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 11.10 Notices. Any notices required or given under this article shall conform to provisions of the Bylaws.
- 11.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in this Declaration.
- 11.12 Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her Contract Purchasers, tenants, guests to (a) indemnify each and every other Owner for, (b) to hold each and every other Owner harmless from, and (c) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

12 AMENDMENT

- 12.1 Amendments by Members. This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officers of the Association and shall be Recorded.
- 12.2 Amendments by Board. The Board may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with the lending requirements of any federally chartered lending institution. Each Owner

shall be deemed to appoint the Association as his or her attorney-in-fact to act with respect to any amendments which is solely for the purpose of complying with such lending requirements.

13 GENERAL PROVISIONS

- 13.1 **Headings.** The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 13.2 **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 13.3 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.
- 13.4 **Number; Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires. The conjunctions "and" and "or" shall be construed to each encompass each other as is commonly indicated by "and/or."
- 13.5 **Easements Reserved and Granted.** Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.
- 13.6 **Interpretation, Jurisdiction and Venue.** This declaration shall be interpreted pursuant to the laws of the State of California. Jurisdiction over any controversy arising from this Declaration shall lay with any court in the State of California provided that the proper venue for any such controversy lays in a court in Calaveras County.
- 13.7 **Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and the Common Area, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of Recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial thirty (30) year term or any ten (10) year extension period a

written instrument, approved by at least an Absolute Majority, terminating the effectiveness of this Declaration is Recorded.

IN WITNESS WHEREOF, I certify that, in accordance with Article 16 of the original Declaration of Covenants, Conditions and Restrictions, this First Restated Declaration of Covenants, Conditions and Restrictions of Fieldstone Owners Association was adopted and approved by a majority of the Membership of the Fieldstone Owners Association.

Phyllis Manford
Phyllis Manford
Secretary

2/13/17
Date

Notary: See Attached Acknowledgment DM

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Calaveras)

On February 13, 2017 before me, Desiree D. McDaniel, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Phyllis Manford
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Desiree D. McDaniel
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: First Restated Declaration of Covenants, conditions and restrictions for Fieldstone 2A
Document Date: February 13, 2017
Number of Pages: 22 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

CALAVERAS COUNTY, CA
KAREN VARNI, COUNTY CLERK-RECORDER

07/22/2004 #2004-15991
08:02:00AM 84 OF 85

EXHIBIT A

**PROPERTY SUBJECT TO THIS
DECLARATION**

All of that certain real property situated in the County of Calaveras, State of California, more particularly described as follows:

Lots 1 through 7, inclusive, Lots 24 through 27, inclusive, Lots 34 through 46, inclusive, and Lots A, B, and F, as shown on that certain Subdivision Map entitled "Final Map Tract 02-125, Fieldstone Subdivision," filed for record July 16, 2004, in Book 8 of Maps, at Page 19, Records of Calaveras County.