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GREEN TREE HOMEOWNERS ASSOCIAT  
OF SACRAMENTO

c/o BERDING & WEIL

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**SECOND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GREEN TREE OF SACRAMENTO**

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**EXHIBITS**

Exhibit "A"	Legal Description of the Development
Exhibit "B"	Legal Description of the Common Area
Exhibit "C"	Legal Description of the Real Property Comprising the Townhome Lots
Exhibit "D"	Legal Description of the Real Property Comprising the Individual Residence Lots
Exhibit "E"	Legal Description of the Recreation Area

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**SECOND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GREEN TREE OF SACRAMENTO**

This Second Restated Declaration of Covenants, Conditions and Restrictions is adopted as of the date of its recording by GREEN TREE HOMEOWNERS ASSOCIATION OF SACRAMENTO, a California non-profit mutual benefit corporation (the "Association").

**RECITALS**

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WHEREAS, the Association is an "association", as that term is defined in California *Civil Code* section 1351(a), which has been created to manage that certain common interest development located in the County of Sacramento, State of California and known as Green Tree of Sacramento (the "Development"); and

WHEREAS, the Association adopted and caused to be executed that certain First Restated Declaration of Covenants, Conditions and Restrictions of Green Tree, dated May 24, 1983, and recorded on June 2, 1983, in Book 83-06-02, beginning at Page 1541, Instrument/Series No. 090822, Official Records of Sacramento County, State of California (the "First Restated Declaration"); and

WHEREAS, the First Restated Declaration establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property which comprises the Development (which is more particularly described in Exhibit "A" attached to this Declaration), and to provide for the management, administration, and operation of the property comprising the Development and the business and affairs of the Association, and to promote the health, safety, welfare, and interests of all owners of property and residents within the Development and any additions thereto as may hereafter be brought within the jurisdiction of the Association, and to take such action as in the judgment of the Board of Directors shall

be necessary or proper or incidental to the foregoing purposes of the Association; and

WHEREAS, the Members, constituting at least fifty-one percent (51%) of both classes of Members of the Association, desire to amend, modify, and otherwise change the First Restated Declaration pursuant to Article XI, Section 1, thereof;

NOW, THEREFORE, pursuant to Article XI, Section 1 of the First Restated Declaration, the Members, constituting at least fifty-one percent (51%) of both classes of Members of the Association, do hereby declare that the aforesaid First Restated Declaration is hereby AMENDED, RESTATED AND SUPERSEDED IN ITS ENTIRETY as set forth in this Declaration; and

IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a "planned development" within the meaning of California *Civil Code* section 1351(k); and

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

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

## **ARTICLE 1    DEFINITIONS**

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



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

- 1.2 Articles. "Articles" shall mean the Articles of Incorporation of Green Tree Homeowners Association of Sacramento, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.3 Assessment. "Assessment" shall mean a charge levied by the Board against an Owner and his or her Lot as provided in Article 5 of this Declaration. "Assessment" shall include any or all of the following:
- (a) Annual Assessments which shall have the meaning set forth in Section 5.6.
  - (b) Special Assessments which shall have the meaning set forth in Section 5.7.
  - (c) Special Individual Assessment which shall have the meaning set forth in Section 5.9.
- 1.4 Association. "Association" shall mean Green Tree Homeowners Association of Sacramento, its successors and assigns.
- 1.5 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.6 By-Laws. "By-Laws" shall mean the By-Laws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.
- 1.7 Common Area. "Common Area" shall mean all real property, excluding the Recreation Area, which is owned by the Association for the common use and enjoyment of the Owners and Residents of the Development. The Common Area owned by the Association at the time of the recording of this Declaration is described on attached Exhibit "B".
- 1.8 County. "County" shall mean the County of Sacramento, in the State of California.

- 1.9 Declaration. "Declaration" shall mean this Second Restated Declaration of Covenants, Conditions and Restrictions of Green Tree of Sacramento, recorded in the Office of the County Recorder of Sacramento County, California, and any amendments thereof.
- 1.10 Development. "Development" shall mean all the real property described in the Declaration comprising the Green Tree of Sacramento planned development, including such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 1.11 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Owners and Residents of a particular Lot. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Lot; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.
- 1.12 Family. "Family" shall mean two or more persons who live together and maintain a common household in a Residence whether or not they are related to each other by birth, marriage, or legal adoption.
- 1.13 Governing Documents. "Governing Documents" shall mean the Articles, By-Laws, Declaration, and Rules, and the policies and resolutions duly adopted by the Board and distributed to the Members.
- 1.14 Lot. "Lot" shall mean any plot of land shown upon any recorded subdivision map of the Development upon which a Residence has been constructed, exclusive of any portion of the Common Area or the Recreation Area.
- (a) "Townhome Lot" shall mean any of the Lots described in Exhibit "C".
- (b) "Individual Residence Lot" shall mean any of the Lots described on Exhibit "D".

- 1.15 Maintenance. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.16 Member. "Member" shall mean each person or entity who is a record owner of a fee or undivided fee interest in any Lot within the Development, except any such person or entity who holds an interest in a Lot merely as security for the performance of an obligation. "Member" shall include both Class A Members and Class R Members as provided in Section 4.3.
- 1.17 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association whom the Board has determined to be not delinquent in the payment of all 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 more particularly set forth in the By-Laws.
- 1.18 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.19 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as a mortgagee under a mortgage.
- 1.20 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development, including contract sellers, but excluding contract purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.21 Party Wall. "Party Wall" shall have the meaning set forth in Section 6.1.
- 1.22 Recreation Area. "Recreation Area" shall mean that certain parcel of real property which is owned by the Association for the common use and enjoyment of the members and which has been improved by the construction and installation of the Recreation Facilities. The Recreation Area owned by the Association at the time of the recording of this Declaration is described on Exhibit "E".

- 1.23 Recreation Facilities. "Recreation Facilities" shall mean the improvements which have been constructed or installed on the Recreation Area for the recreational use and enjoyment of the Members. On the date this Declaration has been recorded the Recreation Facilities include a clubhouse/community building, a swimming pool, and two tennis courts.
- 1.24 Repair. "Repair" shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.25 Replacement. "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.26 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy and shall include both a townhouse constructed on a Townhome Lot and an individual detached dwelling constructed on an Individual Residence Lot.
- 1.27 Resident. "Resident" shall mean any person who resides on a Lot within the Development whether or not such person is an Owner as defined in Section 1.20 above.
- 1.28 Rules. "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.
- 1.29 Single Family Residential Use. "Single Family Residential Use" shall mean occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and federal, state and municipal laws and regulations, including applicable zoning laws.
- 1.30 Total Voting Power. "Total Voting Power" shall mean the total number of votes of Members that could be cast on any particular matter. With respect to matters on which all Members may vote, "Total Voting Power" means two hundred sixty three

(263) votes; and with respect to matters on which only Class A Members may vote, "Total Voting Power" means two hundred four (204) total votes.

## **ARTICLE 2    PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT**

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2.1    Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area and/or the Recreation Area as set forth in this section; provided, however, that all such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Lots over Exclusive Use Common Area.

(a)    The Owner of every Lot shall have a right and easement of use of and enjoyment in, to, and throughout the Recreational Area.

(b)    In addition, the Owner of every Townhome Lot shall have a right and easement of use of and enjoyment in, to and throughout the Common Area.

2.2    Limitation on Easements of Enjoyment. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a)    The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area, the Recreation Area and the Recreational Facilities;

(b)    The right of the Board to charge reasonable admission and other fees for the use of Recreational Area and the Recreational Facilities;

(c)    The right of the Board to determine that a Member is not a Member in Good Standing or to suspend an Owner's rights and privileges as a Member, including the right to use the Recreational Area and the Recreational Facilities for any period during which any Assessment against such Owner's Lot remains unpaid and/or for infraction of the

Governing Documents of the Association, such determination to be made after prior notice to the Member and the right to a hearing by the Board of Directors as more particularly provided in the By-Laws;

- (d) The right of the Board to limit the number of guests of Members who may use the Recreation Facilities.
- (e) The right of the Association, subject to approval of the Members as set forth in Section 4.11, to dedicate or transfer all or any part of the Common Area or of the Recreation Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;
- (f) The right of individual Owners to the exclusive use of designated parking spaces within the Common Area as provided in Section 2.3 of this Declaration;
- (g) The right of the Association to mortgage, pledge, or encumber the Common Area and/or the Recreation Area as security for money borrowed by the Association, subject to the restrictions and limitations set forth in the By-Laws; and
- (h) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Recreation Area or the Owners in common;

2.3 Exclusive Use Common Area. Certain portions of the Common Area are "Exclusive Use Common Areas." These areas are reserved for the exclusive use of the Residents of the Townhome Lots to which they are assigned and exclusive easements for such exclusive use shall be appurtenant to those designated Townhome Lots. Exclusive Use Common Area shall include assigned covered parking spaces (carports) and uncovered (open) parking spaces.

2.4 Parking Rights. Private roads and parking spaces have been set aside within the Common Area, the number, configuration and

location of which were subject to approval by the County of Sacramento. Each such parking space must be of suitable size for the parking of one automobile, but in no event less than nine (9) feet by twenty (20) feet in size, and must be designed so as to provide for maneuvering of automobiles in such a way that the automobiles may leave the parking area to enter any county road in a forward direction, except as otherwise approved by the Department of Public Works of the County of Sacramento. One covered parking space and one uncovered parking space has been allocated to each Townhome Lot. Allocation of a space to a Townhome Lot shall entitle the Owner or Owners thereof to the exclusive right to use the space so allocated for the purpose of parking thereon one passenger vehicle and/or a truck not exceeding three-quarters of a ton in gross weight, a boat or boat trailer, travel trailer or camper; provided, however, that any such vehicle or trailer must be of a size so that it could fit into a covered parking space provided herein and it shall be no wider than nine (9) feet and no longer than twenty (20) feet, and no part thereof shall extend outside of said space; and provided further, that no boat or trailer shall be parked in a carport if such parking causes the Owner to park a vehicle outside of his or her assigned parking spaces.

- (a) Maintenance of Parking Spaces. The cost of maintaining the parking spaces and roads described in this section shall be paid by the Association as hereinafter provided. No such space shall be severed from the Unit ownership to which it has been allocated, except that the Owner or Owners involved may permit other Owners to use any such space, provided that such permission shall be revocable at any time without notice.
- (b) County Approval Required. The foregoing provisions of this section are made for the express benefit of the County of Sacramento, and shall not be amended, modified or changed without the prior approval of the County of Sacramento.

2.5 Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Development to the members of his family, tenants, contract purchasers who reside on the Owner's Lot and guests and invitees, and to such other persons as may be permitted by the Governing Documents and

subject to the terms thereof. Upon the leasing or renting of a Lot, or upon occupancy of a Lot by a contract purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or contract purchasers of such Lot. 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.

2.6 Owners' Duty of Disclosure Upon Sale. Prior to the sale of any Lot, the Owner(s) of such Lot shall provide to the prospective purchaser all documentation and information required by law, including a copy of the Governing Documents and all amendments thereto.

2.7 Common Area. The Common Area and Recreation Area shall be preserved as open space and used for aesthetic and recreational purposes and other purposes incidental and ancillary to the use of the Lots as provided in this Declaration. Such use shall be limited to the private use for aesthetic and recreational purposes by the Members, their families, tenants, resident contract purchasers and guests subject to the Governing Documents.

(a) Except as otherwise provided in this Declaration, there shall be no obstruction of the Common Area or the Recreation Area nor shall anything be altered, constructed, placed, kept, stored, parked, planted on, or removed from the Common Area or Recreation Area without the prior written consent of the Board. The Common Area and Recreation Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials.

(b) Each Owner shall avoid causing any damage to the Common Area and Recreation Area and shall be liable to the Association and shall reimburse the Association for all costs incurred by reason of any damage to the Common Area and Recreation Area and any improvements thereon, including landscaping, which is caused by an Owner or an Owner's family, pets, tenants, contract purchasers, guests, invitees, agents, or representatives as more particularly set forth in Section 12.3.



- (c) Nothing shall be done or kept upon the Common Area or Recreation Area which will result in the cancellation of any insurance maintained by the Association or an increase in premiums for such insurance.

2.8 Construction on Common Area and Recreation Area. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area or Recreation Area, or shall make or create any excavation or fill upon the Common Area or Recreation Area, or shall change the natural or existing drainage of the Common Area or Recreation Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area or Recreation Area.

2.9 Association Construction. The Association may at any time, and from time to time:

- (a) Reconstruct, replace, or refinish any improvement or portion thereof upon the Common Area or the Recreation Area in accordance with the original design, finish or standard of construction of such improvement of such Area which was approved by the governmental entity having jurisdiction.
- (b) Construct, reconstruct, replace, refinish any road improvement or surface upon any portion of the Common Area or the Recreation Area designated on a subdivision map as a private road or parking area.
- (c) Replant destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area or the Recreation Area.
- (d) Place and maintain upon the Common Area or the Recreation Area such signs as the Association may deem necessary for the identification of the Development and of roads, the regulation of traffic, including parking, the regulation and use of such Areas and for the health, welfare, and safety of Owners, tenants and guests. Any such signs to be placed within the street area shall be subject to County approval.

- 2.10 Storage Areas. The Board shall have the right to establish and maintain within the Development appropriate storage yards and storage buildings for the maintenance and retention of materials and equipment needed for planting, building, repair, maintenance and preservation of the structures, gardens and other improvements on the Lots, the Common Area and the Recreation Area.
- 2.11 Mechanic's Liens. In the event there shall be filed against the Common Area or Recreation Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Development or his or her Lot, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Special Individual 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.

### **ARTICLE 3      PRESERVATION OF CHARACTER OF DEVELOPMENT**

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- 3.1 Waiver of Partition and/or Subdivision. There shall be no judicial partition and/or subdivision of the Common Area or Recreation Area and/or any one or more Lots, nor shall the Association or any person acquiring any interest in the Development or any part

thereof seek any such judicial partition and/or subdivision thereof; provided, however, that if any Lot shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants so long as such judicial partition does not result in any physical partition.

- 3.2 Severability. No Owner in any way shall sever his Lot from his interest in the Common Area or Recreation Area.
- 3.3 Use Restrictions. Each Residence located on a Lot shall be used as a Single Family Residence and for no other purpose. The Common and Recreation Areas shall be preserved as open space uses and recreational uses respectively.
- 3.4 Building Restrictions. No building or other improvement which may in any way conflict with the uses set forth in Section 3.3 of this article shall be constructed or maintained in the Common Area or Recreation Area.
- 3.5 Enforcement. The provisions of this article are made for the express benefit of the County of Sacramento, State of California, which County shall have the authority to enforce the provisions of this article. Any modification, amendment, or changes in the provisions of this article shall be subject to the approval of the appropriate officials and/or agencies of the said County.

#### **ARTICLE 4 HOMEOWNERS ASSOCIATION**

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- 4.1 Management and Operation. The Association shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law including provisions of law applicable to a non-profit mutual benefit corporation and to a common interest development. 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 non-profit 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.

- 4.2 Membership. Every Owner of a Lot within the Development shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged or alienated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.
- 4.3 Two Classes of Membership. The Association shall have the following two classes of Membership:
- (a) Owners of Townhome Lots. Those persons who own Townhome Lots shall be Class A Members.
  - (b) Owners of Individual Residence Lots. Those persons who own Individual Residence Lots shall be Class R Members.
- 4.4 Voting. Only Members shall be entitled to vote, and only one vote shall be cast for each Lot, as more particularly set forth in the By-Laws.
- 4.5 Board of Directors. The affairs of the Association shall be managed and its powers shall be exercised by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the By-Laws, and the members of the Board shall be elected as provided in the By-Laws. 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.
- 4.6 Association Rules. The Board of Directors shall have the power and the authority to adopt, amend, disseminate, repeal, and enforce such Rules of general application to the Owners and Residents as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, including Exclusive Use Common Area, the Recreation

Area and the Recreation Facilities; pets; signs; collection and disposal of refuse; minimum standards for maintenance of property; parking and traffic regulations; rental or leasing of Lots within the Development; and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

- 4.7 Distribution of Rules. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. No Rules may be adopted which materially affect the rights, preferences, or privileges of any Owner or class of member as specifically set forth herein. Where the provisions of this Declaration and any rule adopted by the Association are in conflict, the provisions of this Declaration shall prevail.
- 4.8 Manager and Other Personnel. The Board of Directors 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 By-Laws.
- 4.9 Assessments. The Board shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 5 of this Declaration.
- 4.10 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 By-Laws.
- 4.11 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area and Recreation Area; provided that any expenditure of Association funds in an amount which exceeds five percent (5%) of the total annual budget for the addition of any such capital improvements in any year shall require the approval of at least sixty percent (60%) of the total voting power of the Association for any capital improvements to the Recreational Area and of at least sixty percent (60%) of the total voting power of the Class A Members for any capital improvements to the Common Area.

- 4.12 Dedication. The Board of Directors shall have the power and authority to dedicate, sell, or transfer any interest in or to all or any part of the Common Area or Recreation Area to any public agency, authority, or utility, to be used for such purposes and subject to such conditions as the Board shall deem necessary, appropriate, or beneficial to the Association and not inconsistent with its purposes and interests; provided, however, that no such dedication, sale, or transfer shall be effective unless the terms of such dedication, sale, or transfer have been approved by at least sixty percent (60%) of the total voting power of the Association with respect to any such transfer of Recreation Area property and sixty percent (60%) of the total voting power of the Class A Members for any such transfer of Common Area property.
- 4.13 Acquisition of Property. The Board acting on behalf of the Association shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association.
- 4.14 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Townhome Lot for the purpose of performing its obligations under the Governing Documents, including enforcement of the provisions of the Governing Documents, the maintenance, repair, replacement or construction of property as authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities. The Board's right of entry shall be immediate in case of an emergency and in such event the Association's work may be performed under such circumstances whether or not the Owner is present. In all non-emergency situations the Board, or its duly authorized agents, shall furnish the Owner with at least twenty four (24) hours written notice of its intent to enter the Lot, specifying the purpose of such entry.

## ARTICLE 5 ASSESSMENTS AND LIENS

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- 5.1 Covenant of Owner. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments, (ii) Special Assessments, (iii) Special Individual 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.
- 5.2 Personal Obligation of Owner. 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 within the Development 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 in the Office of the County Recorder of Sacramento County.
- 5.3 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 the 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.

5.4 Purpose and Use of Assessments. The assessments levied by the Association shall be exclusively used as follows:

- (a) Assessments levied against Townhome Lots shall be used only to: (1) promote the recreation, safety, health and general welfare of the residents of said Lots; (2) improve and maintain the Common Area and Recreation Area; (3) improve and maintain the townhome residences located on Townhome Lots; (4) to pay real property taxes and assessments duly assessed against the Common Area and Recreation Area; and (5) expenses or administration of the Association for the benefit of all Owners.
- (b) Assessments levied against Individual Residence Lots shall be used only for (1) the improvement and maintenance of the Recreation Area; (2) for the payment of real property taxes and assessments duly assessed against the Recreation Area; and (3) expenses of administration of the Association for the benefit of all Owners.

5.5 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.



5.6 Annual Assessments.

- (a) Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall complete and distribute to the Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and reserves less any surplus from the preceding year, to manage, administer, operate, and maintain the Development, to conduct the affairs of the Association, and to perform all of its duties in accordance with this Declaration. The Board shall allocate and assess the amount of estimated required funds separately with respect to each of the two classes of Lots as provided in this section.
- (b) The Board shall annually fix the amount of each annual assessment to be contributed to capital replacement funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of capital improvements, located on the Common Area, the Recreation Area and roads within the Development, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. Unless the Association is exempt from federal or state taxes, all sums deposited in the capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.
- (c) All costs of operation, including management and administration and reasonable capital replacement reserves, of the Recreation Area shall be allocated between and borne by the Class A and Class R Members as follows:

- (1) Class A Members shall bear fifty-eight percent (58%) of the total cost; and the Owner of each Townhome Lot shall pay one/two hundred fourth (1/204) of the allocation;
  - (2) Class R Members shall bear forty-two percent (42%) of the total cost; and the Owner of each Individual Residence Lot shall pay one/fifty ninth (1/59) of the allocation.
  - (3) All costs of operation, including maintenance, management and reasonable capital replacement reserves, of the Common Area; all costs of maintenance and repair of the Townhome Lots; and the amount of premiums for blanket casualty insurance for Townhome Lot and Common Area improvements obtained by the Association as provided in Section 8.2 (k) (1) of the By-Laws shall be allocated and assessed only among the Class A members.
  - (4) 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 such increase, provided that the number of such Members voting thereon shall be sufficient to at least constitute a quorum of more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the By-Laws.
- (d) Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

5.7 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, construction or reconstruction of improvements located in the Common Area or the Recreation Area, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost. Notwithstanding the foregoing, Class R Members shall be liable only for special assessments relating to the Recreation Area and only in the percentages set forth in Section 5.6(c), Special Assessments other than Special Individual Assessments shall be allocated and assessed among the Lots in the same manner as Annual Assessments. Except in the case of an emergency situation as defined in California *Civil Code* section 1366 and except in the case of restoring funds temporarily transferred from a reserve fund to the Association's operating fund as provided by law, 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 at least a majority of the Members voting on any such Special Assessment, provided that the number of Members voting thereon shall be sufficient to at least constitute a quorum of more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the By-Laws. For purposes of the foregoing sentence, the vote of Class R Members shall be required only with respect to Special Assessments for which they have liability as provided in this Declaration.

- 5.8 Notice and Procedure for Membership Vote. In any case where the vote of the Members is required as provided in Section 5.7 of this Declaration, such vote may be taken either at a meeting of the Members or by written ballot pursuant to California *Corporations Code* section 7513. In the event of a meeting, written notice of the meeting shall be sent to all Members entitled to vote not less than fifteen (15) days and not more than sixty (60) days prior to the meeting; and in the event a vote is to be taken by written ballot the written ballot shall be sent to all Members entitled to vote not less than fifteen (15) days and not more than sixty (60) days prior to the last date for returning the ballot to the Board.

5.9 Special Individual Assessments.

- (a) Subject to subparagraph (b) hereof, Special Individual Assessments may be levied by the Board of Directors against an individual Lot to reimburse the Association for (i) expenses incurred by the Association in accomplishing any maintenance, repair or replacement for which the Owner is responsible under this Declaration or (ii) to reimburse the Association for costs incurred in bringing the Owner and/or his Lot into compliance with the provisions of the Governing Documents. Such expenses shall include those caused by an Owner's willful or negligent acts which cause harm or damage to the Properties or any portion thereof. The Board may also levy a Special Individual Assessment against the Owner of a Lot as a monetary penalty (fine) for violation of any provision of the Governing Documents.
- (b) Special Individual Assessments may only be imposed after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to the Governing Documents. The Board shall ascertain the amount of the expense incurred by the Association in performing the work (including labor, materials and attorneys fees, if any) or the amount of the penalty, as the case may be, and shall levy an assessment in that amount against the Owner to be charged against his or her Lot. The Special Individual Assessment thus levied shall be due and payable to the Association upon levy by the Board and shall be subject to all of the provisions of this article.
- (c) Special Individual Assessments need not be levied on the same basis prescribed for the levying of Annual Assessments. Furthermore, the requirement for Member approval for certain special assessments as described in Section 5.7 above shall not apply to Special Individual Assessments.

5.10 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration for any 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.

- 5.11 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.
- 5.12 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. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this article until at least ten (10) days following the mailing of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association, to the Owner or Owners of the subject Lot, and the recording of such Notice in the Office of the Recorder of Sacramento County, California. Said Notice of Delinquent Assessment shall state the amount of the Assessment, together with all accrued Additional Charges; a description of the Lot against which the same has been assessed; the name or names and mailing addresses of the Owner or Owners thereof; and the name and address of the trustee authorized by the Association to enforce the lien by foreclosure and sale. Upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

- 5.13 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 of Directors, on behalf of the Association, the authority and power to sell the Lot of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Lot, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Lot at said sale. 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.
- 5.14 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 cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 5.15 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; provided, however, that such Assessment lien shall be subordinate to the lien of any first mortgage or deed of trust recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage or deed of trust, or pursuant to a power of sale contained in any such mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.
- 5.16 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board,

which accounts shall be clearly designated CURRENT OPERATING AND MAINTENANCE ACCOUNT and RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 5.4. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Development and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Development, as specified in the annual budget. Upon sale or transfer of any Lot by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.

5.17 Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now or at any time hereafter due to such Owner under any present or future lease or rental agreement for the use or occupation of any Lot owned by such Owner, for the purpose of collecting all Assessments due to Association and delinquent as provided in this Declaration. The Association hereby confers on each Owner the authority to collect and retain all such rents and other monies as they become due and payable; provided, however, that when any Assessment or Additional Charges become delinquent as provided in this Declaration, the Association in its sole discretion, may revoke such authority at any time, upon written notice to the Owner he or she is delinquent in the payment of Assessments. Upon such revocation the Association may collect and retain such rent and other monies, whether current or past due and unpaid.

5.18 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.

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

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use; and
- (b) Any Lot which is owned by the Association as a result of the Association having acquired such Lot through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Lot; and
- (c) All Common Area.

## **ARTICLE 6 PARTY WALLS**

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6.1 Party Walls. The following provisions shall govern party walls:

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences within the Development and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable maintenance and repair of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (c) 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. Any available insurance proceeds shall be used to pay for the costs of restoration and any costs of restoration in excess of insurance proceeds shall be paid by the Owners who make use of the wall in proportion to such use, without



prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- (d) Weatherproofing. Notwithstanding any other provision of this section, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) 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.
- (f) Arbitration. If any dispute arises concerning a party wall, or under the provisions of this section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and shall be binding.

## **ARTICLE 7    ARCHITECTURAL CONTROL**

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7.1 Establishment. The Board shall appoint an Architectural Committee consisting of three (3) Members of the Association at least one of whom shall be a Director. The Board may also appoint one (1) alternate Committee member who may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of any Committee member. In the event of death or resignation of any member of the Committee, the Board shall have the full authority to designate a successor. If at any time there shall not be a duly-constituted Architectural Committee, the Board shall exercise the functions of the Architectural Committee in accordance with the terms of this article.

7.2 Duties. It shall be the duty of the Architectural Committee to consider, evaluate and make recommendations to the Board on proposals or plans submitted to it pursuant to the terms of this

article to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

- 7.3 Meetings. The Architectural Committee shall meet as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members shall constitute an act by the Committee. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Committee function.
- 7.4 Rules. The Architectural Committee may, from time to time, and subject to the Board's approval, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions of this article by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of buildings and other structures, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that said Architectural Rules shall not be in derogation of the minimum standards required by this Declaration.
- 7.5 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no building, fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind or any landscaping shall be commenced, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to the Architectural Committee and approved in writing by the Board as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation.
- 7.6 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 Committee or Board may require.

7.7 Grant of Approval. The Architectural Committee shall recommend granting of the requested approval only if:

- (a) The Owner shall have complied with the provisions of Section 7.5 above;
- (b) The Committee shall find that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Committee; and
- (c) The Committee shall determine 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.

7.8 Form of Approval. All Committee recommendations for approval and rejection of requests for approval of plans and specifications submitted in accordance with this article shall be in writing.

7.9 Board Review. The Committee shall submit a copy of its findings and recommendations to the Board within forty-five (45) days of submission of plans and specifications to the Association in accordance with Section 7.5. The Board shall either approve, reject or request modifications of the plans and specifications within forty five (45) days after its receipt of the findings and recommendations of the Committee. Any request which has not been acted upon by the Board within ninety (90) days after the plans and specifications have been submitted to the Association as provided in this article shall be deemed approved.

7.10 Commencement. Upon receipt of approval pursuant to Section 7.9 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the

commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to said approval, said commencement to occur, in all cases, within ninety (90) days from the date of such approval. 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 said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.11 Completion. The Owner shall, in any event, complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for 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 Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 7.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.

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

- (a) Upon the completion of any construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this article, the Owner shall give written notice thereof to the Architectural Committee.
- (b) Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Committee finds that such construction, reconstruction, alteration, or

refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.

- (c) 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 Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.
- (d) At the hearing the Owner, the Architectural Committee and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. 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, at its option, may either 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.
- (e) If, for any reason, the Architectural Committee 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.

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

- (a) Within thirty (30) days after proper application for preliminary approval, the Architectural Committee shall consider and make a recommendation concerning such request. The Committee shall recommend granting of the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the preliminary application, would be entitled to a final approval on the basis of a full and complete application.
- (b) Within thirty (30) days after the Committee has submitted its recommendation to the Board, the Board shall approve, deny or require modifications of the request for preliminary approval. In granting or denying a request for preliminary approval, the Board may give such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.
- (c) Any preliminary approval granted by the Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Board.

- (d) In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.
- 7.14 Non-Waiver. The approval by the Architectural Committee or Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee and 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.
- 7.15 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 cause to be recorded an estoppel certificate, certifying (with respect to any Lot of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) 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 said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.
- 7.16 Notice of Noncompliance. If any improvements are installed on any Lot or Residence that are not in compliance with this Declaration the Board is authorized to record or cause to be recorded against such Lot a Notice of Noncompliance which shall provide: (i) a legal description of the Lot affected, (ii) the name of the record Owner, as most recently reported to the Association and (iii) 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 Board shall record or cause to be recorded an Estoppel Certificate in accordance with Section 7.15.
- 7.17 Liability. Neither the Architectural Committee, the Board nor any member thereof shall be liable to the Association or to any

Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 7.15, whether or not the facts therein are correct; provided, however, that the Committee, the Board or such member 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 Architectural Committee, the Board or any member thereof, may, but is not required to, consult with or hear the views of any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Association.

- 7.18 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.

## **ARTICLE 8 MAINTENANCE OF PROPERTY**

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### **8.1 Association Responsibility.**

- (a) Common Area and Recreation Area Maintenance. The Association shall provide maintenance, repair, and replacement of the Common Area and Recreation Area and all facilities, improvements, and landscaping thereon, including private streets, private driveways, parking spaces, fences located around the perimeter of the Development, walks and utility facilities, except for those utility facilities which are maintained by public or private utility companies or agencies, and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. The Association's maintenance responsibility shall include maintenance and repair and, when necessary,



replacement of assigned parking spaces located on the Common Area to the extent the responsibility therefor is expressly assigned to one or more Owners, as set forth in this article. The Association shall further cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area and Recreation Area in good condition and repair, including painting of the exterior surfaces of the building(s) and such other improvements as the Board, in its discretion, determines to be necessary.

- (b) Maintenance of Townhome Lots. The Association shall provide exterior maintenance upon each Townhome Lot as follows: care for and maintain, including painting as often as reasonably necessary, repair and replace when reasonably necessary roofs, gutters, and downspouts; exterior building surfaces including siding panels; steps; patio fences (including party fences separating adjoining Townhome Lots); and all foundations and other portions of the townhouse residential exteriors that are of a nonstructural nature, exterior doors, trees and shrubs in front and side yards.
- (c) Maintenance of Individual Residence Lots. The Association shall have no responsibilities whatsoever for maintenance, repair or replacement of any Individual Residence Lots or any structures or other improvements located thereon.

8.2 Authority for Entry of Townhome Lot. The Association or its agents may enter any Townhome Lot, 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 Board is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.3 Owner Responsibility.

- (a) Maintenance of Lots. All Lots, whether occupied or unoccupied, and any improvements placed thereon, shall

at all times be maintained in a neat and attractive condition and in such a manner as to prevent their becoming unsightly by the reason of the accumulation of rubbish, debris or unsightly growth thereon. Except to the extent that maintenance of any improvement on a Lot is expressly and clearly made the responsibility of the Association, each Owner shall be responsible for the maintenance, repair and replacement of his or her Lot and all improvements thereon. In particular, each Owner of a Townhome Lot shall be responsible for maintenance, repair and replacement when necessary of windows, window and door fixtures and hardware, window screens and screen doors, doors, including patio doors (but excluding exterior front entry doors) and door frames, and patio interiors including trees and shrubs located in the patio of his or her Lot, as well as the interior of his or her Residence and the maintenance, repair and replacement, when necessary, of the plumbing, electrical, heating and air conditioning systems and all utility facilities located within the boundaries of his or her Lot and servicing his or her Residence. There shall be no exterior painting of townhome Residences or repair or replacement of any portion of the roofs or utility laterals of such Residences by or on behalf of Townhome Lot Owners or Residents, it being the intention of this Declaration that such features of the Townhome Residences be maintained, repaired and, when necessary, replaced by the Association as provided in Section 8.1 of this article to preserve the external harmony of the Development.

- (b) Apportionment of Expenses. If two or more Owners of Townhome Lots cannot agree on the apportionment of expenses relating to both Lots or several Lots, such expenses shall be conclusively apportioned by the Board. If the Board is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled in accordance with the alternative dispute resolution procedures provided for in Section 12.7 of this Declaration.
  
- (c) Owner Cooperative Maintenance Obligations. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area or

Recreation Area and all exterior roofs of Townhome Residences, including but not limited to, parking areas and walks, shall be undertaken by the Board or by its duly authorized representatives; provided, that to the extent necessary or desirable to accomplish such maintenance by the Association, the individual Owners shall cooperate with the Board and its agents and representatives in the completion of such work.

- (d) Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any exterior portions of his or her Lot or Exclusive Use Common Area shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control.

#### 8.4 Owner Liability.

- (a) The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. The determination of the Board shall be conclusive. In the event an Owner fails to perform such work within sixty (60) 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.
- (b) In the event the need for any maintenance, repair, or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, contract purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Special Individual Assessment.

## ARTICLE 9    DAMAGE AND DESTRUCTION

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9.1    Replacement or Repair of Association Property. In the event of damage to or destruction of the Common Area, Recreation Area, or other property of the Association or any part thereof, the Association shall repair or replace the same with any insurance proceeds payable to it by reason of such damage or destruction.

(a)    If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may levy a Special Assessment against the Members of the Association in accordance with Section 5.7 of this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds.

(b)    The Members against whom a Special Assessment would be levied pursuant to this section may elect not to cause such replacement or repair by the vote or written consent of two-thirds of the total voting power of the Association.

(c)    If there is an election not to rebuild or repair, the applicable insurance proceeds shall be distributed by the Association to the Members pro rata or otherwise made use of as determined by the vote of the Members.

9.2    Rebuilding or Repair of Improvements on Lots.

(a)    Damage to Single Lot. If a single Lot is damaged or destroyed by fire or other casualty, any insurance proceeds from insurance policies obtained by the Association shall be paid to the Owner or Owners of such Lot, or the Mortgagee thereof, as their respective interests appear, and such Owner(s) or Mortgagee shall use the same to rebuild or repair such Lot to its condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to complete such work, the Lot Owner(s) shall pay such additional sums as may be necessary to complete such rebuilding and repair.

(b) Damage to Two or More Lots. If two or more Lots are damaged or destroyed by fire or other casualty, the amount of available insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Lots to their condition prior to the damage or destruction, or to such other condition as shall have been approved in advance by the Board. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and or rebuilding, the Board shall levy a Special Assessment against all affected Lot Owners pursuant to Section 5.7 hereof.

9.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Development, shall be paid to the Association and shall be used in the manner determined by the Board, provided that such use shall not be inconsistent with the purposes of the Association. The Association shall represent the interests of all Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Common Area.

9.4 Condemnation of Lots. If an entire Residence or Lot, or so much thereof as to render the remainder unfit for use as a residence, is condemned or taken for a public or quasi-public use, pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the Owner's membership in the Association shall terminate as of the last day of the month in which the condemnor obtains the right to possession, or upon Owner's vacating the premises, whichever occurs last. If only a portion of such Residence or Lot is taken and the remainder is fit for use as a residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving an Owner's Residence or Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

## ARTICLE 10 USE RESTRICTIONS

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- 10.1 Residential Use. Residences shall be occupied and used for single family residential purposes only.
- 10.2 Rental of Lots. Any leasing or renting of any Residence within the Development shall be subject to all the provisions of the Governing Documents and this section.
- (a) Owner Responsibility. Each Owner leasing a Residence shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Residences and Common Area and for each tenant's compliance with the provisions of all Association Governing Documents. An Owner leasing or renting a Lot shall provide the tenant(s) with copies of the Governing Documents and all subsequent amendments.

In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Unit, the Association being deemed to be a third party beneficiary of any lease or rental agreement involving any Unit within the Project. The Association's right to maintain an eviction action shall arise only in the event that (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

Every Owner of a Unit that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising

out of the conduct or presence of the occupants of the Unit upon the Project, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, including eviction as provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Special Individual Assessment.

- (b) Requirements of Written Lease or Rental Agreement. Any lease or rental of any Residence within the Development shall be by written lease or rental agreement, which shall expressly provide that its terms are subject to all of the provisions of the Governing Documents, that the tenants and lessees of such Lot shall comply with all provisions of the Governing Documents, and that any violation of any of said provisions of the Governing Documents shall constitute a breach and default of the terms of such lease or rental agreement. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of one (1) year.
  
- 10.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof.
  
- 10.4 Offensive Conduct, Nuisances. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. All Lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by the reason of the accumulation of rubbish, debris or unsightly growth thereon. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any

Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Lot, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area.

- 10.5 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Development that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board.
- 10.6 Barbecues. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles designed for such purpose.
- 10.7 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or construction of structures appurtenant to a private Residence with the Development.
- 10.8 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Development shall be entitled to sever that Lot from the Common Area portion of the Properties. No easement or other interest in a Lot shall be given without the prior written approval of the Board.
- 10.9 Private Streets in Common and Recreation Areas. Private streets in the Common Areas and Recreation Areas shall not be used for recreational purposes, including "joy riding," racing, etc. Motorcycle, mopeds, or cars shall be allowed on such private streets only for ingress and egress.



- 10.10 Sports Apparatus. No basketball standards or fixed sports apparatus shall be placed upon or attached to any Townhome Lot without the written permission of the Board.
- 10.11 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations. There shall be no free-standing exterior mailboxes or newspaper tubes, except as approved by the Board.
- 10.12 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Development.
- 10.13 No Antennas. In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Development, no Owner, Resident or lessee shall place or maintain any objects, such as masts, towers, poles, or television and radio antennas, on or about the exterior of any building within the Development except as authorized by the Board.
- 10.14 Animals. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, or bred in any Townhome Lot or elsewhere within the Development except that domestic dogs, cats and other customary household pets may be kept in reasonable numbers and size, subject to the Rules, provided they are not kept, bred, or raised for commercial purposes. Dogs and cats shall be allowed on the Common Areas or Recreation Area only when they are leashed and otherwise under the supervision and restraint of their Owners. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. Unless otherwise provided in the Rules, "reasonable numbers" shall be deemed to limit the total number of all dogs, cats, and other customary household pets kept in a Lot to two (2). The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person. 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 family, tenants, guests, or invitees. The Owner 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 Project by the Owner, members of his or her family, guests, tenants, or invitees. The Board may adopt and enforce Pet Rules in addition to the provisions of this section.

- 10.15 Townhome Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in covered sanitary containers located in an appropriate area of the carport or patio assigned to each Townhome Lot. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept or accumulated upon any portion of any Lot or elsewhere in the Development, except in such containers. No portion of the Development shall be used for the storage of building materials other than in connection with approved construction.
- 10.16 Signs. No sign of any kind shall be displayed to the public view from any portion of the Development except that this limitation shall not apply to:
- (a) Such signs as may be required by legal proceedings;
  - (b) Signs the prohibition of which is precluded by law;
  - (c) A single identification sign which has been approved by the Architectural Committee located on a Lot identifying the number or address of the Lot and/or the names of the occupants;
  - (d) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and reasonably located on a Lot advertising a Lot for sale or rent;
  - (e) Such signs as have been approved by the Association located at or near any entrance to the Development identifying the Development;

- (f) Such signs as may be required for traffic control and regulation of streets or open areas within the Development; and
- (g) Such signs on the Common Area as may be approved by the Board for a purpose reasonably related to the affairs of the Association.

10.17 Vehicles and Parking in Townhome Area. Unless otherwise permitted by the Board, no automobiles shall be parked or left on any driveway or on any portion of the Development described in Exhibits "B" and "C" other than on or within an assigned carport or parking space. No vehicle, including mopeds and motorcycles, shall be parked on any areas adjacent to the front of Townhomes, including sidewalks that surround the buildings. No mobile home, trailer of any kind, permanent tent, or similar structure, recreational motor home, boat or boat trailer; and no truck exceeding three-quarters (3/4) of a ton in gross weight shall be parked, kept, or placed, maintained, constructed, reconstructed or repaired in or upon any carport or street within that portion of the Development described in Exhibits "B" and "C", except in compliance with the provisions of Section 2.4 hereof; provided, however, that the temporary parking of any such vehicle, boat or trailer for a period not to exceed four (4) hours during any forty-eight (48) hour period for purposes of loading or unloading the same shall not constitute a violation of this section. No motor vehicle shall be constructed, reconstructed or repaired within the Development and no dilapidated, inoperable or abandoned vehicle, including vehicles without wheel(s) or an engine (other than trailers which do not require engines), shall be stored in the Development; provided, however, that the provisions of this paragraph shall not apply to minor automobile tune-ups, emergency vehicle repairs or temporary construction shelters or facilities maintained during, or used exclusively in connection with, the construction of any work or improvement approved by the Board. No commercial vehicles of any nature shall be parked or stored on any Townhome Lot or carport or on the driveway within that portion of the Development described in Exhibits "B" and "C", except for commercial vehicles providing goods or services to Owners or the Association, and in that event only for the duration necessary to provide such service.

- 10.18 Parking Enforcement. In addition to the provisions of Section 10.17 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed against the Lot Owner responsible or whose household members, tenants, contract purchasers, or guests are responsible for the presence of such vehicle, as a Special Individual Assessment, and such Assessment may be enforced against the Lot Owner in the manner provided in this Declaration for non-payment of Assessments.
- 10.19 Interior Improvements. An Owner shall do no act or any work that will impair the structural soundness or integrity of another Residence or impair any easement or do any act or allow any condition to exist which will adversely affect the other Residences of their Owners.
- 10.20 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Residence shall comply with any rules adopted by the Board or the Architectural Committee. In no event shall aluminum foil, newspaper, or similar materials be placed in windows.

## **ARTICLE 11 EASEMENTS**

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- 11.1 Easements in General. There are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, in addition to all easements, if any, reserved and granted on the Subdivision Map applicable to the Development, the easements, reciprocal

negative easements, secondary easements and rights of way as particularly identified in this article.

- 11.2 Easements of Encroachment. Each Townhome Lot is hereby declared to have an easement over adjoining Townhome Lots, Common Area and Recreation Area for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications, and due to engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owner shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurs due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Townhome Lot agree that minor encroachments over adjoining Townhome Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

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

- 11.3 Maintenance Easements.

- (a) In all cases where a structural wall constituting a portion of a single Residence, or a structural wall constituting a common wall for two Residences, is located upon the dividing line between adjacent Townhome Lots, the

Owner of said adjoining Lot shall have reciprocal mutual non-exclusive 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 Residence of which said wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the Residence or Residences on said Lot or Lots. The Owner of a Townhome Lot having a structural wall situated on the boundary line between his 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 Townhome 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 Townhome Lot upon which the Residence of which said wall is a part is situated.

- (b) An easement is granted and reserved to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area, the Recreation Area and, at reasonable times and upon reasonable prior notice to the Owner, to enter any Lot to perform the duties of maintenance and repair of the Townhome Lots and Residences thereon, Common Areas or Recreation Areas provided for herein. In the event that there shall be located within any Townhome Lot pipes, vents, outlets, wires, or other structures serving more than one Townhome Lot, the Owner of each such Lot so served shall have and enjoy a perpetual easement for the maintenance and use of any such pipe, vent, outlet, or other structure.

11.4 Ingress, Egress and Support. An easement for ingress, egress and support through the Common Area is appurtenant to each Lot, and the Common Area is subject to such easements.

- 11.5 Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and a cable television antenna system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on said Common Areas. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Development except as installed at the time of construction of the Development or thereafter approved by the Association's Board of Directors. The easements provided for in this section shall in no way affect any other recorded easement on the Development.

## **ARTICLE 12 ENFORCEMENT**

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- 12.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines, by adoption of a resolution, 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.
- 12.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 12.3 Owners' Responsibility.
- (a) Responsibility for Conduct of Others. Each Owner shall be fully responsible for informing members of his or her

family and his or her tenants, contract purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for any violation of the provisions of the Governing Documents by members of his or her family or his or her tenants, contract purchasers, or guests. Each Owner shall further be fully responsible for the conduct and activities of his or her pets or those of members of his or her family or of his or her tenants, contract purchasers, and guests.

- (b) Responsibility for Damage. If any damage results to any portion of the Development from the negligent or intentional conduct of any Owner or Resident, or his or her family, contract purchasers, tenants, guests, or household pets, or from the utilities located within such person's Lot, or from vegetation placed or planted in the Development by or on behalf of any such person, the cost of making any necessary repairs shall be the responsibility of the Owner of the particular Lot involved in said negligent or intentional conduct. If the Owner of such Lot does not promptly repair such damage to the satisfaction of the Board, the Board may have the damage repaired and charge the Owner for such repair in the form of a Special Individual Assessment.
- (c) Joint and Several Liability. 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.

#### 12.4 Rights and Remedies of the Association.

- (a) Rights Generally. 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.
- (b) 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 said Member has violated any provision of the Governing



Documents including a failure to pay any Assessment when due, the Board may 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.

- (c) 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 family, or his or her tenants, contract purchasers, or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 12.3(a) for such breach or infraction. A sanction may include, but shall not necessarily be limited to, the imposition of a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing as provided in the By-Laws. The payment of any such monetary penalty may be enforced as a Special Individual Assessment as provided in Section 5.9 hereof as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Special Individual 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 such Owner's family, tenants, contract purchasers, guests, pets, or other invitees.
- (d) Amount of Fines. Any monetary penalty imposed pursuant to this section shall not exceed the amount for each violation, as set forth in the By-Laws.
- (e) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 5 hereof, 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 family 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.

- (f) 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 family, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 5 hereof. The provisions of this subsection (f) 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.

- 12.5 Disciplinary Rules. The Board or a 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.

- 12.6 Emergency Situations. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency including (i) an

immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, or (ii) a traffic or fire hazard, or (iii) a threat of material damage to or destruction of the Development or any portion thereof, or (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations), the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

- 12.7 Alternative Dispute Resolution. Any dispute between the Association and any Member or between two or more Members of the Association which is subject to California *Civil Code* section 1354(b) shall be submitted to alternative dispute resolution procedures as herein described. The power and duty of the Board of Directors to levy and collect assessments through lien foreclosure proceedings shall not be subject to alternative dispute resolution procedures; however, any underlying dispute resulting in the imposition of a Special Individual Assessment shall first be submitted to alternative dispute resolution procedures at the request of any party to the dispute. In the case of any claim, dispute or controversy, which is not otherwise subject to California *Civil Code* section 1354(b), involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right

to file a claim in Small Claims Court and have the matter determined therein in lieu of alternative dispute resolution procedures.

- (a) Procedure. To the extent that prior notice and an opportunity for a hearing by the Board is required under the Governing Documents, such notice and an opportunity for a hearing shall be provided before any dispute is submitted to alternative dispute resolution procedures. Prior to filing an action seeking judicial resolution of any dispute subject to the provisions of this section, the Association or any Member who is a party to such dispute and who desires to obtain resolution of such dispute shall serve upon all other parties to the dispute a Request for Resolution. The form of the Request for Resolution shall conform to the requirements of California *Civil Code* section 1354 and service shall be in the manner provided in that section. The parties to such dispute shall first attempt to have the matter resolved through mediation and, if mediation is unsuccessful, the dispute shall be submitted to arbitration.

Arbitration shall be non-binding unless the parties to the dispute mutually agree to binding arbitration. If a judicial action to resolve a dispute subject to the provisions of this section has been commenced but the dispute has not been submitted to any alternative dispute resolution procedure, upon demand by any party to the action the dispute shall be submitted to alternative resolution procedures as provided in this section or a reference shall be ordered in accordance with the terms of California *Code of Civil Procedure* section 638(1) or any successor provision of law. The provisions of this section shall not be deemed to prohibit a party to a dispute from seeking preliminary or temporary injunctive relief where such relief is necessary, provided that the substance of the dispute shall be submitted to alternative dispute resolution.

The alternative dispute resolution process shall be completed within one hundred twenty (120) days after the date of service of the Request for Resolution or after the date a court orders the dispute submitted to

alternative dispute resolution or orders a reference, as the case may be.

- (b) Mediation. Mediation shall consist of an informal meeting or meetings which all parties to the dispute may attend. In the event any party shall fail without cause to attend and participate in any such mediation that party shall conclusively be deemed to have waived that party's right to have the dispute resolved through mediation. The Board may maintain a list of mediators who are acceptable to the Board and who have indicated their willingness to serve as mediator and whose fees for such services have been established by the Board. The parties to a dispute may agree upon any mediator, including a mediator obtained from a list maintained by the Board or provided by any recognized mediation service. If the parties to a dispute are able to agree upon a mediator, the agreed-upon person shall be notified and, upon such person's acceptance, shall be the mediator for that proceeding. The costs of mediation shall be advanced equally by the parties to the dispute.

The mediator shall establish the format of the mediation proceedings and the procedures to be followed. The mediator shall have the duty to assess the rights and obligations of the parties involved in the dispute and shall be entitled to interview the parties, agents or representatives of the parties, or any other person when the mediator deems such an interview appropriate or necessary. The mediator shall also be entitled to request and receive copies of correspondence, records, minutes, and other such evidentiary documentation to assist in resolving the dispute. The mediator shall use his or her best efforts to effect a settlement of the dispute that is in the best interest of all parties involved.

The mediator may provide the parties to the dispute with a recommendation as to resolution of the dispute, and the parties shall be notified of any such recommendation. If a dispute is not resolved as a result of mediation proceedings, or if the parties do not agree upon a mediator, the matter shall be submitted to

arbitration in accordance with the provisions of this section.

(c) Arbitration. Any dispute subject to this section that has not been resolved as a result of mediation shall be submitted to arbitration in accordance with the provisions of the California Arbitration Act (California *Code of Civil Procedure* section 1280 *et seq.* [the "Act"]) or in accordance with such other arbitration procedures as may be mutually agreed upon by the parties.

(1) Selection of Arbitrator. Unless the parties shall mutually agree to have three (3) arbitrators, there shall be one (1) arbitrator. If the parties are able to agree upon the selection of an arbitrator or arbitrators, such person or persons shall serve as arbitrator(s). If the parties are unable to so agree, an arbitrator shall be selected as provided in the Act or in accordance with such other procedure as may be mutually agreed upon by the parties.

(2) Governing Rules and Procedures. The arbitration hearing shall take place in the County of Sacramento, California, at the time and place selected by the arbitrator(s). The arbitrator(s) may, but shall not be required to, employ the applicable rules of the American Arbitration Association, Judicial Arbitration & Mediation Services, Inc. (JAMS), or another similar organization as a guide in conducting the arbitration proceedings and shall have absolute discretion to determine whether or not and to what extent the parties shall be permitted to pursue discovery procedures. Arbitration shall be commenced by the personal delivery or mailing by registered or certified mail of a written demand for arbitration by one party upon the other. At the arbitration hearing, any relevant evidence may be presented including oral testimony of any material witnesses or documentary evidence, and the formal rules of evidence shall not govern. Evidence may be admitted or not admitted in the sole discretion of the arbitrator(s).

(3) Costs. The costs of arbitration shall be advanced equally by the parties, and the prevailing party shall be entitled to and shall receive as part of the award reimbursement for all costs, including attorneys' fees, advanced or incurred in connection with the arbitration proceeding and any subsequent judicial proceeding arising therefrom; provided, however, that the arbitrator shall have the right to allocate costs between the parties in such proportions as the arbitrator(s) shall deem appropriate.

(4) Award. The decision of the arbitrator(s) shall be in writing. If there are three arbitrators, the decision of any two of the arbitrators, shall constitute the decision of the arbitrators.

(d) Admissibility of evidence; disclosure. Unless mutually agreed to by the parties to the dispute, evidence of anything said or of admissions made in the course of the alternative dispute resolution process shall not be admissible in evidence and testimony referring to or disclosure of any such statement or admission may not be compelled in any civil action; and documents prepared for the purpose of, in the course of, or pursuant to alternative dispute resolution procedures shall not be admissible in evidence and disclosure of such documents may not be compelled in any civil action.

12.8 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.

12.9 Notices. Any notices required or given under this article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the

affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, return receipt requested, sent to the most recent address for the affected Member as shown on the records of the Association.

- 12.10 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 family or his or her tenants, contract purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorney's fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Special Individual Assessment as provided in Article 5 hereof.

## **ARTICLE 13 MORTGAGEE PROTECTION**

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- 13.1 Mortgagee Protection Clause. No breach of any of the covenants, conditions and restrictions contained herein, nor the enforcement of any lien provisions herein, shall render invalid the lien of the first mortgage (meaning a mortgage with first priority over any other mortgage) on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure, Trustee's sale, or otherwise.
- (a) All First Mortgagees that have filed with the Association a request for notice of default, shall be entitled to receive written notice from the Association of any default by the trustor of any deed of trust on a Lot (the beneficiary interest in which is held by said First Mortgagee) in the performance of such Trustor's obligations under the Declaration, which is not cured within sixty (60) days. It shall be the responsibility of each Owner to notify the Association within thirty (30) days after the close of his



or her escrow to purchase a Lot of the name and address of the First Mortgagee.

- (b) The Association shall discharge its obligations and notify First Mortgagees by sending written notices required herein to the lender or lenders requesting notice at the address given on the request for notice or set forth in a subsequent written notice to the Association.
- (c) The Declaration contains no provisions creating "a right of first refusal," but should any such rights be created in the future, any First Mortgagee coming into the possession of a Lot pursuant to the remedies provided in a deed of trust, or foreclosure or deed in lieu of foreclosure, shall be exempt from any such right of first refusal.
- (d) Unless at least fifty-one percent (51%) of the First Mortgagees (based upon one (1) vote for each mortgage or deed of trust owned) or fifty-one percent (51%) of the Owners of the individual Lots in the Development have given their prior written approval, the Association shall not be entitled to:
  - (1) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area or property owned directly or indirectly by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause).
  - (2) Fail to maintain fire and extended coverage on insurable Association Common Area or Recreation Area improvements, on a current replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).
  - (5) Use hazard insurance proceeds for losses to any Association Common Area or Recreation Area property for other than the repair, replacement or

reconstruction of such Common Area or Recreation Area property.

- (e) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area or Recreation Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area or Recreation Area property and institutional lenders making such payment shall be entitled to immediate reimbursement therefor from the Association. The Association shall, upon request, furnish First Mortgagees with an agreement in favor of all First Mortgagees reflecting this reimbursement obligation.
- (f) No Owner or any other party shall have priority over any rights of First Mortgagees pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of Common Area or Recreation Area property.
- (g) Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area or Recreation Area that must be replaced on a periodic basis, and the assessment therefor shall be payable in regular installments rather than by special assessments.
- (h) Any agreement for professional management of the Association shall not exceed one (1) year. Furthermore, any such agreement shall provide for termination by either party without cause and without payment of a termination fee on thirty (30) days written notice. If the Board of Directors decides to change management firms, then the Board shall give at least ten (10) days prior notice of such decision to all First Mortgagees which have requested such notice in writing.

## ARTICLE 14 AMENDMENT

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- 14.1 Procedure. This Declaration may be amended by the affirmative vote or written consent of Members representing at least a majority of the total voting power of the Association. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Recorder of Sacramento County.

## ARTICLE 15 GENERAL PROVISIONS

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- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 Interpretation. The provisions of this Declaration shall be minimum requirements adopted for the promotion of health, safety, comfort, convenience and general welfare of the Owners and occupants of the Development.
- (a) It is not the intent of this Declaration to interfere with the provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued, or which may be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intent of this Declaration to interfere with or abrogate or annul easements, covenants, or other agreements between parties subject to this Declaration; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Lot, or upon the

construction of buildings or structures, or in connection with any other matters, that are imposed or required by provisions of law or ordinances or by such rules, regulations or permits, or by such easements, covenants, and agreements, then in that case, the provisions of this Declaration shall control.

(b) In the event any provision of this Declaration shall be deemed to be ambiguous or susceptible to more than one interpretation, the Board shall have the power and authority to adopt a reasonable interpretation. Any such interpretation adopted by the Board shall for all purposes be the effective and applicable interpretation of such provision.

15.5 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

15.6 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

15.7 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

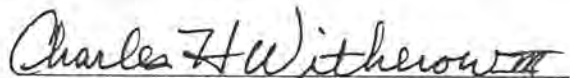
15.8 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Lots and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of 30 years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six months prior to the expiration of the initial 30 year term or any 10 year extension period a written

instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Sacramento County, California.

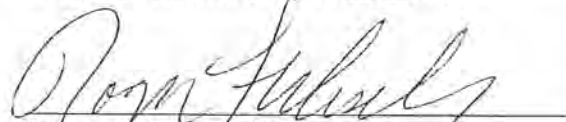
IN WITNESS WHEREOF, we, the Members of GREEN TREE HOMEOWNERS ASSOCIATION OF SACRAMENTO, constituting at least fifty-one percent (51%) of the total voting power of the Association, hereby affirm, approve, and adopt the foregoing Second Restated Declaration of Covenants, Conditions and Restrictions of Green Tree of Sacramento in accordance with Article XI, Section 1 of the First Restated Declaration, dated May 24, 1983, and recorded on June 2, 1983, in Sacramento County Official Records in Book 83-06-02, beginning on Page 1541, by means of the signatures of the President and Secretary of the Association, duly authorized by written consent of at least fifty-one percent (51%) of the voting power of the Association, which Declaration shall be recorded with the County Recorder of Sacramento County, California.

DATED: 4/30, 1997.

GREEN TREE HOMEOWNERS  
ASSOCIATION OF SACRAMENTO, a  
California nonprofit mutual benefit  
corporation



Charles Witherow, President



Roger Wesely, Secretary

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08-15-96/DRS

State of California

County of Sacramento

On 5/2/97 before me, Laurie M. Hodgkins  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Charles Witherow III  
NAME(S) OF SIGNER(S)

personally known to me - OR -  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.



WITNESS my hand and official seal.

Laurie M. Hodgkins  
SIGNATURE OF NOTARY

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

INDIVIDUAL  
 CORPORATE OFFICER  
President  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

PARTNER(S)       LIMITED  
 GENERAL

\_\_\_\_\_  
NUMBER OF PAGES

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER: \_\_\_\_\_

\_\_\_\_\_  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Sacramento

On 4-30-97 before me, Laurie M. Hodgkins  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Roger Wlesely  
Name(s) of Signer(s)

personally known to me - **OR** -  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.



WITNESS my hand and official seal.

Laurie M. Hodgkins  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

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

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

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

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

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

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

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

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

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

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

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

EXHIBIT "A"

LEGAL DESCRIPTION OF THE DEVELOPMENT

Lots 1 through 83, inclusive, and Parcels A and B, as shown on that certain parcel map entitled Green Tree Unit No. 1, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 1; and

Lots 84 through 170, inclusive, and Parcels A and B, as shown on that certain parcel map entitled Green Tree Unit No. 2, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 36; and

Lots 171 through 204, inclusive, and Lot A, as shown on that certain parcel map entitled Green Tree Unit No. 3, recorded in the Office of the County Recorder for Sacramento County in Book 94 of Maps, Map No. 23; and

Lots 1 through 59, inclusive, as shown on the official plat of Green Tree Unit No. 4, recorded in the Office of the Recorder of Sacramento County in Book 105 of Maps, Map No. 13.



EXHIBIT "B"

LEGAL DESCRIPTION OF THE COMMON AREA

Parcel A, as shown on that certain parcel map entitled Green Tree Unit No. 1, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 1; and

Parcels A and B, as shown on that certain parcel map entitled Green Tree Unit No. 2, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 36; and

Lot A, as shown on that certain parcel map entitled Green Tree Unit No. 3, recorded in the Office of the County Recorder for Sacramento County in Book 94 of Maps, Map No. 23.

EXHIBIT "C"

**LEGAL DESCRIPTION OF THE  
REAL PROPERTY COMPRISING THE TOWNHOME LOTS**

Lots 1 through 83, inclusive, as shown on that certain parcel map entitled Green Tree Unit No. 1, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 1; and

Lots 84 through 170, inclusive, as shown on that certain parcel map entitled Green Tree Unit No. 2, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 36; and

Lots 171 through 204, inclusive, as shown on that certain parcel map entitled Green Tree Unit No. 3, recorded in the Office of the County Recorder for Sacramento County in Book 94 of Maps, Map No. 23.

EXHIBIT "D"

LEGAL DESCRIPTION OF THE  
REAL PROPERTY COMPRISING THE INDIVIDUAL RESIDENCE LOTS

Lots 1 through 59, inclusive, as shown on the official plat of Green Tree Unit No. 4, recorded in the Office of the Recorder of Sacramento County in Book 105 of Maps, Map No. 13.

EXHIBIT "E"

LEGAL DESCRIPTION OF THE RECREATION AREA

All of Parcel B, as shown on that certain parcel map entitled Green Tree Unit No. 1, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 1.

EXHIBIT "E"

LEGAL DESCRIPTION OF THE RECREATION AREA

All of Parcel B, as shown on that certain parcel map entitled Green Tree Unit No. 1, recorded in the Office of the County Recorder for Sacramento County in Book 4 of Parcel Maps at Page 1.

RECORDING REQUESTED BY, AND  
WHEN RECORDED, RETURN TO:

GREEN TREE HOMEOWNERS ASSOCIATION  
OF SACRAMENTO  
c/o BERDING & WEIL  
Attention: Deon R. Stein, Esq.  
2200 Sunrise Boulevard, Suite 220  
Rancho Cordova, California 95670

Recorded in the County of Sacramento  
John Dark, Clerk/Recorder



234.00

199705081392 2:56pm 05/08/97

605 80005637 08 17  
R01 76 7.00 225.00 0.00 0.00 0.00 0.00 0.00  
2.00

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(Space Above for Recorder's Use)

SECOND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GREEN TREE OF SACRAMENTO