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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUNSHINE GARDEN HOMEOWNERS' ASSOCIATION**

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON AGE, RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, VETERAN OR MILITARY STATUS, GENETIC INFORMATION, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE BY SUBMITTING A "RESTRICTIVE COVENANT MODIFICATION" FORM, TOGETHER WITH A COPY OF THE ATTACHED DOCUMENT WITH THE UNLAWFUL PROVISION REDACTED TO THE COUNTY RECORDER'S OFFICE. THE "RESTRICTIVE COVENANT MODIFICATION" FORM CAN BE OBTAINED FROM THE COUNTY RECORDER'S OFFICE AND MAY BE AVAILABLE ON ITS INTERNET WEBSITE. THE FORM MAY ALSO BE AVAILABLE FROM THE PARTY THAT PROVIDED YOU WITH THIS DOCUMENT. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS.

THE FASSOCIATION, THE BOARD, ALL OWNERS AND DECLARANT SHALL BE BOUND BY THE DISPUTE RESOLUTION PROCEDURES INCLUDING THE WAIVER OF RIGHT TO JURY TRIAL, BINDING ARBITRATION AND JUDICIAL REFERENCE PROVISIONS DESCRIBED IN ARTICLE X HEREIN, WHICH MAY IMPACT THE LEGAL RIGHTS OF SUCH PARTIES.

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B: Civil Code Section 4035 et. seq.	
C: Legal Description of Real Property (Phase 1B)	
D: Legal Description of Real Property (Phase 1C)(Phase 2)(Phase 3)	
E: Sample Form of Buyer's Occupancy and Resale Agreement with Option to Purchase	
F: Maintenance, Repair, Replacement; Residence Lots 49-58; 61-68; 70-77	
G OMITTED	

H: Retaining Walls - Association Maintains
I: Retaining Walls - Owners Maintain
J: Square Footages of Residences

THIS DECLARATION is made this _____ day of _____, 2024, by Pacific Sunshine Development, LLC, a California limited liability company, herein referred to as “Declarant” with reference to the following facts:

(1) Declarant is the owner of that certain subdivision of real property commonly described as Sunshine Garden, in the City of Watsonville, County of Santa Cruz, California, and more particularly described in attached Exhibit “A” (the “Real Property” or “Development”).

(2) It is the desire and intention of Declarant to subdivide and sell the Lots in the subdivision described above, to impose on the Lots mutually beneficial restrictions under a general plan of improvement, and to provide for the management, maintenance and care of the common areas and residences within the subdivision in the manner set forth herein, for the benefit of all of the Lots and the Members. To that end, the Real Property shall be considered a “Planned Development” within the meaning of Section 4175 of the California Civil Code, subject to the provisions of the Davis-Stirling Common Interest Development Act (Part 5, Division Four of the Civil Code, commencing with Civil Code Section 4000, *et seq.*).

(3) **This is a “phased” project, and certain additional property may be annexed to the Development in the manner provided in Section 2.02 below. There is no guarantee that all Phases will be annexed.**

NOW, THEREFORE, Declarant hereby declares that the Real Property in Phase 1A and all of the Real Property that is Annexed into this Declaration and the Development is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, 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 for the subdivision, improvement and sale of the Real Property and are established and agreed upon the purpose of enhancing and perfecting the value, desirability and attractiveness of the Real Property and every part thereof. All of the covenants, conditions and restrictions shall:

- (a) Run with the Real Property;
- (b) Be binding upon all parties having or acquiring any right, title or interest therein or any part thereof;
- (c) Be for the benefit of each Owner of any portion of the Real Property or any interest therein; and
- (d) Inure to the benefit of and be binding upon each successor in interest of the Owners thereof.

This Declaration is made by Declarant pursuant to Sections 4200, 4250 and 5975 of the California Civil Code.

ARTICLE I
Definition of Terms

1.01 Annexation. The process of added property to the Development as provided in Section 2.02 of this Declaration as Phases of the Development.

1.02 Annual Budget Report. That budgetary information required to be distributed by the Association to the Members pursuant to Civil Code Section 5300. See also Section 7.03 of the Bylaws.

1.03 Annual Policy Statement. That policy information required to be distributed by the Association to the Members pursuant to Civil Code Section 5310. See also Section 7.04(B) of the Bylaws.

1.04 Articles. The Articles of Incorporation of the Association filed with the California Secretary of State.

1.05 Association. Sunshine Garden Homeowners' Association, a California nonprofit mutual benefit corporation.

1.06 Base Budget. The Base Budgets of the Association The Base Budgets of the Association which include items of costs and expenses of the Association that are to be allocated and assessed to each Lot in the Project on an equal basis, including the following: Common Area landscaping, irrigation, electricity, and maintenance, along with reserve costs for all aging components in the Common Areas and costs for management, reserve study, accounting fees, legal expenses, and board education fees.

1.07 Board of Directors or Board. The governing body of the Association.

1.08 Bylaws. The duly adopted Bylaws of the Association as amended.

1.09 City. The City of Watsonville, California.

1.10 Common Area. Pursuant to California Civil Code Section 4095 and 4175, "Common Area" shall mean the entire Development except the separate Residence Lots. Specifically, there is no Common Area for Phase 1A; the "Common Area" in Phase 1B shall include all real property owned or maintained by the Association for the common use and enjoyment of the Members, including without limitation the following: Lots A, B, K (including Lily Lane, a private walkway); for Phase 1C the Common Areas shall be Lot H and Lot D (San Nicholas Lane and Lot J (including Rose Lane) for Phase 2, Lot E (Santa Barbara Lane) and for Phase 3 Lots C and G and Lot L (Peony Lane) and Lot F (Lilac Lane) per Tract Map 1587, in the office of the Recorder of said County.

1.11 Common Facilities. Any improvements or facilities located or constructed in the Common Area.

1.12 Cost Center. One (1) or more areas, improvements, or facilities, located within the Development, the use or maintenance of which is substantially restricted to Members of certain Residence Lots, as specified in this Declaration, where the expenses of operating, maintaining and replacing such areas, improvements or facilities are born solely or disproportionately by such specified Members, including the Cost Centers for Cost Center Budgets described in Sections 1.26 and 6.02(A) for the following: townhome exterior maintenance (stucco, stone veneer replacement, balcony repairs, waterproofing, railing replacement, roofs, and other such exterior maintenance items), costs for management, reserve study, and accounting fees.

1.12 Declarant:
Pacific Sunshine Development, LLC, a California limited liability company, and any successor or assign that expressly assumes the rights and duties of Declarant under this Declaration in a recorded written instrument.

1.13 Declaration: This Declaration and any amendments made thereto from time to time.

1.14 Delivery of Documents to Members; Association. The Association's Management Documents may include references to the manner in which documents or notices are to be delivered either to the Members by the Association or to the Association by the Members. The parameters for delivery from the Association to Members by "individual delivery" or "individual notice" are set forth in Civil Code Section 4040; the parameters for delivery from the Association to the members by "general delivery" or "general notice" are set forth in Civil Code Section 4045; and the parameters for delivery from a Member to the Association are set forth in Civil Code Section 4035. A copy of each of each of these Sections of the Civil Code as well as related Sections 4050 and 4055 are attached hereto as Exhibit "B". The Association and Members are advised to review any amendments to these Sections as may be enacted from time to time.

1.15 Detached Home Lots. Lots, Lots 1-6, inclusive; Lot 48; and Lots 59, 60 and 69, as shown on the Map.

1.16 Development. The Real Property that is the development project known as "Sunshine Gardens Subdivision", with a Tentative Subdivision Map and Design Review, subject to certain conditions of approval was approved by the City Council of the City of Watsonville, on January 12, 2016 via Resolution 3-16 (CM) and Final Subdivision Map, Tract 1587, approval by the City Council of the City of Watsonville via Resolution no. 150-17, for a subdivision of 6.869 acres zoned RM-2 to allow 87 residential units at 1777 Santa Victoria Avenue as made subject to this Declaration in Phases as provided in this Declaration.

1.17 Director. A duly elected or appointed member of the Board of Directors of the Association.

1.18 Fannie Mae. The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

1.19 FHA. The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

1.20 Freddie Mac. The Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

1.21 Management Documents. This Declaration, as may be amended from time to time, the exhibits attached hereto, the Articles of Incorporation, the Bylaws, the budget, any recorded Notice of Annexation of Territory, and applicable rules and regulations of the Association adopted by the Board, including any Design Guidelines, supplements, amendments and exhibits thereto and other basic documents that govern the Development, including but not limited to, the approved Final Map, and any Conditions of Approval imposed on the Development by the City.

1.22 Member. The record Owner, whether one or more persons or entities, of the fee simple title to a Residence Lot in the Development that is then subject to this Declaration, including contract purchasers in possession, but excluding those having such interest merely as security for performance of an obligation.

1.23 Mortgage; First Mortgage. Any recorded mortgage or deed of trust by which a Residence Lot is hypothecated or encumbered to secure performance of an obligation pursuant to a loan made by a Mortgagee. A First Mortgage shall mean any mortgage or deed of trust made by an individual or entity including a bank, savings and loan association, commercial bank, trust company, credit union, insurance company, real estate investment trust, pension fund, or other lending institution (including Fannie Mae, Freddie Mac, FHA, VA or other similar institutional

secondary market mortgage purchaser of insurer) that makes or is the assignee of a loan secured by a Mortgage on a Residence Lot with first priority over other Mortgages thereon.

1.24 Mortgagee; First Mortgagee. A beneficiary or holder of a Mortgage, or his/her/its assignee. A First Mortgagee is the Mortgagee of a First Mortgage.

1.25 Officer. A duly elected or appointed officer of the Association.

1.26 Operating Budgets. Written itemized estimates of the Association's income and expenses prepared pursuant to Article VI hereof and the Association's Bylaws. For purposes hereof, the Association's Operating Budgets shall consist of the following:

- (A) Cost Center Budget for Townhomes Phase 1C;
- (B) Cost Center Budget for Townhomes Phase 2;
- (C) Cost Center Budget for Townhomes Phase 3;
- (D) Base Budget for Phase 1A;
- (E) Base Budget for Phase 1B; and
- (F) Base Budget for Phase 1C.
- (G) Base Budget for Phase 2.
- (H) Base Budget for Phase 3.

1.27 Owner. The record title holder, whether one (1) or more persons or entities, of fee simple title to any Residence Lot which is a part of the Development, but expressly excluding those persons or entities having an interest merely as security for the performance of an obligation, until such person obtains fee title hereto, and those parties who have leasehold interests in a Residence Lot. If a Residence Lot is sold under a recorded contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.

1.28 Phase. The Each Phase of the Development, with Phase 1A, as the initial Phase, and Phase 1B, Phase 1C, Phase 2 and Phase 3, as added and annexed to the Development by process of Annexation as provided in this Declaration.

1.29 Public Report. The Final Subdivision Public Report for any respective Phase in the Development issued by the California Department of Real Estate.

1.31 Residence. A private residence constructed on a Residence Lot.

1.32 Residence Lot or Lot. One of the separate Lots for residential use, in Phase 1A, Phase 1B, Phase 1C, Phase 2 and Phase 3 of the Development as Lots 1-87 per the Map recorded on October 4, 2017, in Volume 127 of Maps, page 9 in the Office of the Recorder of Santa Cruz County, California, as are made part of the Development as described in Article II below. Some of the Residence Lots are Detached Home Lots as herein defined, and some of the Residence Lots are Townhomes or Townhome Residences as herein defined.

1.33 Townhomes or Townhome Residences; Townhome Lot. Lots 7-28, inclusive, in Phase 1C; Lots 29-47 inclusive in Phase 2; Lots 78-87, inclusive in Phase 3.

1.34 VA. The Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.35 Voting Power of the Association. Pursuant to Article III of the Bylaws, the Association shall have two (2) classes of voting membership:

(A) **Class A Membership.** The Class A Members shall be all Members, with the exception of Declarant, and shall be entitled to one (1) vote for each Residence Lot owned;

provided that there shall be only one (1) vote for each Residence Lot irrespective of the number of Owners of that Residence Lot.

(B) **Class B Membership.** The Class B Member shall be Declarant, whose voting rights shall be the same as the Class A Members, except that the Class B Member may triple its votes for each Residence Lot owned.

Except as may otherwise be provided pursuant to any Subsidy Agreement or Maintenance Agreement referenced in Section 6.02(I) of the Declaration), voting rights attributable to the Residence Lots in each Phase of the Development shall not vest until assessments against the Residence Lots in such Phase have been levied by the Association.

(C) **Voting Power of the Association.** Except as otherwise provided below, the total voting power of the Class A and Class B memberships shall be considered the Voting Power of the Association.

(D) **Conversion of Class B Memberships to Class A Memberships.** The Class B memberships shall cease and be irreversibly converted to Class A memberships upon the happening of either of the following events, whichever occurs earlier:

(1) On the second (2nd) anniversary of close of escrow for the conveyance of the first (1st) Residence Lot in the most recent Phase of the Development.

(2) On the fourth (4th) anniversary of close of escrow for the conveyance of the first (1st) Residence Lot in the first Phase of the Development.

(E) **Close of All Escrows.** In the event escrows for the sale of all Residence Lots in any Phase of the Development close before conversion of the Class B Memberships to Class A Memberships as provided in subsection (D) above, Declarant shall be deemed to own one (1) Residence Lot in Phase 1A of the Development for purposes of allowing Declarant to exercise its Class B voting rights until the conversion of the Class B Memberships to Class A Memberships pursuant to subsection (D) above.

(F) **Actions Requiring Consent of Both Classes.** Any action by the Association requiring both the approval of the Voting Power of the Association and the approval of a majority of the Voting Power of the Association other than Declarant, before being undertaken, shall require the vote or written assent of a majority of each class of membership during the time that there are two (2) outstanding classes of memberships. Accordingly, where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable, except as provided in Sections 4.12 and 10.01(D) below. After the conversion of Class B membership to Class A membership, any provision herein requiring the approval of "the Voting Power of the Association other than Declarant" shall mean the vote or written assent of a majority of the total Voting Power of the Association and the vote or written assent of a majority of the total Voting Power of the Association other than Declarant.

(G) **No Amendment of Section.** The foregoing notwithstanding, no amendment of this Section 1.35, modifying the voting rights of Declarant, shall be adopted unless such amendment is consented to, in writing, by Declarant.

ARTICLE II
Property Subject to Declaration; Annexation

2.01 The Real Property (Phase 1A). This is a phased Development. This Declaration shall apply initially to the real property (referred to herein as “Phase 1A” or the “Real Property”) described in Exhibit “A”, a copy of which is attached hereto and made a part hereof by this reference.

2.02 Annexation. Additional property may be annexed to the Development only as follows:

(A) **Annexation of Additional Phases.** Under a plan of phased development which has been or shall be submitted to and approved by the California Real Estate Commissioner and subject to the provisions of Section 2.03 below, Declarant shall have the right to annex all or a part of the following additional property to the Development without the approval of the Association or the Members, as follows: Phase 1B shall be that certain real property in Santa Cruz County as described in the attached Exhibit “C,” and Phase 1C, Phase 2 and Phase 3 shall be that certain real property in Santa Cruz County as described in the attached Exhibit “D.” Annexation of property pursuant hereto shall be effected by the following procedure:

(1) Recording of the Final Subdivision Map(s) or Final Parcel Map(s) for the real property to be annexed.

(2) Recording of a Notice of Annexation of Territory, which shall contain the following:

(a) A reference to this Declaration, which shall state the date of its recording and the instrument number of this Declaration as recorded; and

(b) A statement that the provisions of this Declaration shall apply to the annexed territory in the manner as set forth below and which may contain such additional or different covenants, conditions, restrictions and reservations with respect to the annexed property as Declarant may deem to be appropriate for the Development of the annexed property.

(3) Compliance with subsection (D) below.

(4) A closing of any sale of any Lot for a Residence Lot in a Phase of the Project, meaning the recordation by Declarant of a grant deed for a Lot in a Phase to buyer of that Lot, shall not occur until such time as the Declarant has completed the Residence on the Lot and completed the Common Area Improvements located in that Phase and/or Common Area Improvements that are not located in that Phase but are required by the City to be completed for such Phase as required by and in accordance with the City’s Subdivision Improvement Agreement for that Phase with the Declarant.

(B) **Application of this Declaration.** Upon recordation of the documents referred to in subsections (A)(1) through (A)(2) above (as applicable), the covenants, conditions, restrictions and reservations contained in this Declaration shall apply to the annexed land in the same manner as if it was originally covered by this Declaration, and thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the annexed land shall be the same as with respect to the original land, except for any additional or different covenants, conditions and restrictions that Declarant may impose pursuant to the foregoing authority. Upon annexation of Phase 1B, Phase 1C, Phase 2 and/or Phase 3, the Common Area in each such Phase shall be conveyed to the Association.

(C) **Grant of Easements Upon Annexation of Additional Phases.** The purpose of this subsection (C) is to provide for the reservation and conveyance of reciprocal easements for use, enjoyment, ingress, egress and incidental purposes over, under, across and

through the Common Area within each Phase for the Owners of Residence Lots of all Phases which are made subject to this Declaration. In order to provide for the creation of the easements over Phase 1A and Phase 1B, pursuant to subsections (a) and (2) below, and notwithstanding the provisions of Section 4.05, Declarant hereby reserves from the Common Area within each Phase, with the right to grant the same to others, nonexclusive easements for use, enjoyment, ingress, egress, utilities and incidental purposes over, under, across and through the Common Area within each of such Phases, respectively, upon their being made subject to this Declaration for the purposes of establishing reciprocal easements in each of such respective Phases for the Owners of Residence Lots in the other Phases, all as more particularly described in to subsections (a) and (2) below.

(a) **Phase 1B.** Upon recording the Notice of Annexation to annex Phase 1B, as provided in subsection (A)(2) above, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 1A, and each Owner of a Residence Lot in Phase 1A shall thereby acquire and have, a nonexclusive easement for use, enjoyment, ingress, egress and incidental purposes over, under, across and through all the Common Area within Phase 1B.

(2) **Phase 1C.** Upon recording the Notice of Annexation to annex Phase 1C, as provided in subsection (A)(2) above, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 1A and Phase 1B, and each Owner of a Residence Lot in Phase 1A and Phase 1B shall thereby acquire and have, a nonexclusive easement for use, enjoyment, ingress, egress and incidental purposes over, under, across and through all the Common Area within Phase 1C. In addition, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 1C, and each Owner of a Residence Lot in Phase 1C shall thereby acquire and have, a nonexclusive easement of use, enjoyment, ingress, egress and incidental purposes over, under, across and through the Common Area within Phase 1B.

(3) **Phase 2.** Upon recording the Notice of Annexation to annex Phase 2, as provided in subsection (A)(2) above, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 1A, Phase 1B, and Phase 1C, and each Owner of a Residence Lot in Phase 1A, Phase 1B and Phase 1C shall thereby acquire and have, a nonexclusive easement for use, enjoyment, ingress, egress and incidental purposes over, under, across and through all the Common Area within Phase 2. In addition, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 2, and each Owner of a Residence Lot in Phase 2 shall thereby acquire and have, a nonexclusive easement of use, enjoyment, ingress, egress and incidental purposes over, under, across and through the Common Area within Phase 1B and Phase 1C.

(4) **Phase 3.** Upon recording the Notice of Annexation to annex Phase 3, as provided in subsection (A)(2) above, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 1A, Phase 1B, Phase 1C and Phase 2, and each Owner of a Residence Lot in such Phases shall thereby acquire and have, a nonexclusive easement for use, enjoyment, ingress, egress and incidental purposes over, under, across and through all the Common Area within Phase 3. In addition, Declarant shall be deemed to grant to each Owner of a Residence Lot in Phase 3, and each Owner of a Residence Lot in Phase 3 shall thereby acquire and have, a nonexclusive easement of use, enjoyment, ingress, egress and incidental purposes over, under, across and through the Common Area within Phase 1B, Phase 1C and Phase 2.

(D) **Maximum Number of Residence Lots.** Upon recordation hereof, this Declaration shall apply only to Phase 1A containing a maximum of six (6) Residence Lots. Pursuant to the annexation provisions of subsection (A) above, Declarant may annex to the Development Phase 1B containing a maximum of six (6) Residence Lots; Phase 1C containing a maximum of twenty-two (22) Residence Lots; Phase 2 containing a maximum of twenty-six four (26) Residence Lots and Phase 3 containing a maximum of twenty-seven (27) Residence Lots with the Development ultimately consisting of eighty-seven (87) Residence Lots. The following conditions shall have been satisfied by Declarant prior to recording the Notice of Annexation of Territory referred to above for any Phase in the Development:

(1) Subject to the provisions of Section 4.12 below, improvements to be constructed in the Common Area within the Phase to be annexed shall have been completed and shall be of a structure type and quality similar to that of the improvements in the then existing Development.

(2) All taxes and other assessments relating to the property in such later Phase shall have been paid or otherwise satisfactorily provided for.

(E) **Ownership of Annexed Real Property.** Any subsequent Phase which may be annexed hereto pursuant to the foregoing may be annexed despite it being owned by someone other than Declarant, upon that Owner's consent and compliance with the above provisions.

(F) **Grant of Easements if Remaining Phase Not Annexed.** If any remaining Phase is not annexed as provided above and the property in that Phase requires access over the private streets located within the Common Area of the Development (or any annexed Phase thereof) or access to and use of common utilities located in the Common Area, the Association, on request by the owner of such property, shall grant to such owner for the benefit of such property easements for reasonable vehicular and pedestrian traffic and/or reasonable use of the common utilities for residential developments of comparable size and density; provided:

(1) To the maximum extent possible, such easements shall be located on existing roadways and utility corridors located in the Common Area; and

(2) The property (and the owners thereof) shall be obligated to pay their equitable share of the cost of maintenance and repair of such private streets and common utilities.

(G) **Annexation of Additional Real Property by the Association.** Property, other than that included in Phases 1A, 1B, 1C, 2 and 3, as described above, may be annexed to the Development upon the written approval of sixty-seven percent (67%) of the Voting Power of the Association, excluding Declarant. Upon such approval, the annexation shall be effected by the procedures set forth above.

(H) **Sequence of Construction and Sales in Various Phases.** Construction and/or sale of Residences or Residence Lots in any Phase that has been annexed to the Development as set forth above need not necessarily proceed in the order that the Phase was annexed. To illustrate the foregoing, Declarant may, in its discretion, construct and/or sell Residences or Residence Lots in Phase 1C prior to constructing or selling the Residences or Residence Lots in Phase 1B, and so forth. In the event the foregoing causes modifications to the budget of the Association reviewed by the California Department of Real Estate ("DRE") for any such annexed Phase, the Declarant shall obtain the consent of the Association and DRE to such modified budget prior to the close of escrow for the sale of the first Residence or Residence Lot in such Phase.

(I) **Design, Size and Configuration of Development.** Declarant shall have the right, at any time, to change the design, size and configuration of the Development, or to make any other changes to the Development, subject to any necessary approvals or entitlements from the City of Watsonville. There is no guarantee that the Development will be developed as originally planned.

2.03 Development Control. Nothing in this Article or elsewhere in the Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading construction, advertising marketing, leasing and sales of the Residence Lots, and all other property within the Development (including any property which may be annexed thereto pursuant to the provisions of this Article), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its employees and agents (including, without limitation, the entity retained by Declarant that originally constructed the buildings and other improvements), in conjunction with such development and marketing of Residence Lots in the Development. Declarant shall have the right to: (i) complete construction of any improvements in the Development; (ii) redesign or otherwise alter the style, size, color or

appearance of any improvements in any portion of the Development owned by Declarant and implement an assessment schedule thereon consistent with such development; (iii) construct additional improvements on any portion of the Development owned by Declarant; (iv) subdivide; re-subdivide, adjust lot or boundary lines, grade or regrade any portion of the Development owned by Declarant; and (v) otherwise control all aspects of designating, construction, and phasing the improvements in the Development (including revising the number of Phases and the maximum number of Residence Lots in any place), and of marketing and conveying Residence Lots in the Development. Notwithstanding the foregoing, the rights of Declarant are subject to any approvals or entitlements from the City of Watsonville.

Nothing in this Article or elsewhere in this Declaration shall be understood or construed to compel Declarant to construct any subsequent Phase of the Development, nor to compel Declarant to annex said Phases to the Development. The purpose of this Article is merely to describe the legal relationship between the first and any subsequent Phases of the Development in the event all or any of such Phases shall be constructed and annexed to the Development.

ARTICLE III ***The Owners' Association***

3.01 Management and Operations. The Development, to be known as Sunshine Garden, shall be organized and operated as a Planned Development. The grant deeds conveying interests to individual purchasers shall expressly refer to and incorporate by reference this Declaration. All Owners of Residence Lots that are part of the Development initially as Phase 1a or Annexed into the Development as subsequent Phases when so Annexed, shall be Members of Sunshine Garden Homeowners' Association, a nonprofit mutual benefit corporation, which will exercise the powers as granted to the Association. Such powers are for the purpose of owning, operating, maintaining and managing the Common Area and Common Facilities for the benefit of the Owners of Residence Lots and for providing such service for and conducting such common business affairs of its Members as is specified in the Management Documents.

3.02 Consent to Becoming Member of Association. The purchaser of any Residence Lot in the Development shall, by the acceptance of a deed therefor whether from Declarant or from subsequent Owners of that Residence Lot, or by the signing of an installment land sale contract or agreement to purchase the Residence Lot, consent to becoming a Member of the Association, to abide by the Management Documents of the Association, and to accept all of the benefits and obligations of the Members.

3.03 Powers of the Association. The powers of the Association, its membership and their voting rights and the authority of its Officers and Directors shall be set forth in its Management Documents.

3.04 Vesting of Voting Power. The voting power shall vest when the power of assessment has passed to the Association, as set forth in Section 6.01 below.

ARTICLE IV ***Property Rights of Members; Easements; Partition***

4.01 Common Area. The Common Area in each Phase will be conveyed by Declarant to the Association prior to the conveyance of the first Residence Lot in that Phase. The Common Area shall be owned by the Association for the use, enjoyment and convenience of the Members and shall contain the Common Facilities. The improvements and landscaping located in the Common Area shall be maintained, repaired and replaced by the Association, except as otherwise especially stated in this Declaration, as provided in Section 8.01(A). There is no Common Area in Phase 1A. Each Residence Lot is hereby declared to have an easement over the Common Area in each Phase in which Common Area is located for the benefit of the Residence Lots, the Members and each of them for their respective families, guests and invitees, for all of the purposes and uses herein set forth and, without limiting the generality of the foregoing for parking purposes and use,

and for ingress and egress over and through the Common Area, subject, however, to the rights of the Association, which include the following rights:

(A) To limit, by appropriate rules, the number of guests of Members and the use of the Common Area and Common Facilities.

(B) To borrow money in accordance with its Bylaws for the purpose of improving the Common Area and Common Facilities and/or performing its rights and privileges, duties and obligations, under the Management Documents.

(C) Subject to Section 4.04 below, to dedicate or transfer all or any part of the Common Area and Common Facilities and/or performing its rights and privileges, duties and obligations, under the Management Documents to any public agency or authority, or to other persons or entities, for such purposes as the Board deems in the best interests of the Association.

The foregoing notwithstanding, in the event Declarant has established a sales office and model homes in the Development pursuant to Section 5.01 below, Declarant, its sales agents and employees shall have the right to the nonexclusive use of the Common Area and Common Facilities for the purpose of maintaining the sales office and model homes and signs reasonably necessary to market the Residence Lots. This right shall terminate three (3) years after the original issuance of the Public Report for the Phase in which the model homes or sales offices are located. Use of the Common Area and Common Facilities by Declarant and its agents and employees shall not unreasonably interfere with the use thereof by any Member or lawful occupants of any other Residence Lot.

4.02 Encroachments. Each Residence Lot is hereby declared to have an easement over the Common Area, Common Facilities and other Residence Lots for the purpose of accommodating any encroachment due to engineering or surveying errors, errors in original construction, settlement or shifting of any building, overhangs and projections in original construction, or for any other cause not due to willful misconduct of any Member. There shall be, in addition, valid and appropriate easements for the maintenance of such encroachments. If any portion of the Common Area or Common Facilities encroaches upon any Residence Lot or any Residence Lot encroaches upon the Common Area, Common Facilities or other Residence Lot as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the Development, a valid easement for the encroachment and for the maintenance thereof shall exist so long as the encroachment exists.

4.03 Public Utility Easement; Gas Lines; Electricity Lines; Telephone Lines; Television Lines; Water Lines; Drainage System; Sanitary Sewer System; Utilities; Maintenance.

(A) **Public Utility Easement.** The Association shall have a nonexclusive easement over, under, across and through those portions of Residence Lots 1-2 and 55-60 labeled "5' PUE or "5' SDE", and those portions of Residence Lots 7-28 located within "edge PUE - public utility easement", as shown on Tract Map No. 1587 for purposes of installing, maintaining and repairing the following utility lines and facilities ("Utility Lines") therein if not otherwise installed, maintained, and repaired by the City of Watsonville, the purveyor or Member as provided below. For purpose hereof, "5' PUE" and "edge PUE" shall be referenced as "PUE Areas" for purposes of this Section 4.03. The Members shall keep the easement area located on their Lot free from any obstruction of such improvements and facilities and shall permit no permanent structures to be erected in the easement area, other than fences or walls which cross but do not transverse the length of the easement area or otherwise interfere with the purposes for which this easement is granted.

(1) **Gas Lines.** The purveyor shall be responsible for maintaining and repairing the gas utility lines and facilities located within the (i) public right of way of Santa Catalina Avenue, San Luis Avenue, and Parcel A of Tract Map 1587, (ii) "PUE Areas" as labeled on Tract Map No. 1587, and (iii) Common Area of the Development, up to and including the meter.

The Members shall be responsible for maintaining the gas utility lines and facilities from the meter to the Residence.

(2) ***Electricity Lines.***

(a) The purveyor shall be responsible for maintaining and repairing the electricity utility lines and facilities located within the (i) public right of way of Santa Catalina Avenue, San Luis Avenue, and Parcel A of Tract Map 1587, (ii) "PUE Areas" as labeled on Tract Map No. 1587, and (iii) Common Area of the Development, up to and including the meter. The Members shall be responsible for maintaining and repairing the electricity utility lines and facilities from the meter to the Residence.

(b) The Owners of Lots 50, 52, 54, 56 and 58 shall have a non-exclusive easement for underground private electric lines and purposes incidental thereto over, under, across and through a portion of Lots 49, 51, 53, 55 and 57, respectively described in Exhibit "K" attached hereto for purposes of installing, maintaining, repairing, and using underground electric lines located in the easement area shown in Exhibit "K" (see maps K-1 through K-5). The Owners of Lots 49, 51, 53, 55 and 57 shall keep the respective easement areas located on their lots free from any obstruction of such electric lines and other utility improvements located in the easement area and shall permit no permanent structures or other improvements to be erected in the easement area that otherwise would defeat the purposes of this grant of easement.

Telephone Lines.

(a) The purveyor shall be responsible for maintaining and repairing the cable utility lines and facilities located within the (i) public right of way of Santa Catalina Avenue, San Luis Avenue, and Parcel A of Tract Map 1587, (ii) "PUE Areas" as labeled on Tract Map No. 1587, and (iii) Common Area of the Development, up to and including the service cabinet. The Members shall be responsible for maintaining and repairing the phone utility lines and facilities from the service cabinet to the Residence.

(b) The Owners of Lot 50, 52, 54, 56 and 58 shall have a non-exclusive easement for underground private telephone lines and purposes incidental thereto over, under, across and through a portion of Lots 49, 51, 53, 55 and 57, respectively described in Exhibit "K" attached hereto for purposes of installing, maintaining, repairing, and using underground telephone lines located in the easement area shown in Exhibit "K" (see maps K-1 through K-5). The Owners of Lots 49, 51, 53, 55 and 57 shall keep the respective easement areas located on their lots free from any obstruction of such telephone lines and other utility improvements located in the easement area and shall permit no permanent structures or other improvements to be erected in the easement area that otherwise would defeat the purposes of this grant of easement.

Television Lines.

(a) The purveyor shall be responsible for maintaining the cable utility lines and facilities located within the (i) public right of way of Santa Catalina Avenue, San Luis Avenue, and Parcel A of Tract Map 1587, (ii) "PUE Areas" as labeled on Tract Map No. 1587, and (iii) Common Area of the Development, up to and including the service cabinet. The Members shall be responsible for maintaining and repairing the cable utility lines and facilities from the service cabinet to the Residence.

(b) The Owners of Lot 50, 52, 54, 56 and 58 shall have a non-exclusive easement for underground private television lines and purposes incidental thereto over, under, across and through a portion of Lots 49, 51, 53, 55 and 57, respectively described in Exhibit "K" attached hereto for purposes of installing, maintaining, repairing, and using underground television lines located in the easement area shown in Exhibit "K" (see maps K-1 through K-5). The Owners of Lots 49, 51, 53, 55 and 57 shall keep the respective easement areas located on their lots free from any obstruction of such television lines and other utility improvements located in the easement area and shall permit no permanent structures or other improvements to be erected in the easement area that otherwise would defeat the purposes of this grant of easement.

(3) ***Drainage System.***

(a) The storm lines, storm structures and storm facilities located within the public right of way of Santa Catalina Avenue, San Luis Avenue and Parcel A; as shown on Tract Map 1587, shall be maintained and repaired by the City of Watsonville;

(b) The storm lines, storm structures and storm facilities located in the (i) "PUE Areas" and "5' SDE" areas as labeled on the Tract Map for Phase 1A, and for Phases 1B and 1C upon annexation of Phases 1B and 1C, and (ii) Common Area will be maintained and repaired by the Association, and the cost thereof shall be included in the Association's budget for assessment against the Residence Lots as provided in Article VI. Declarant has heretofore prepared a Storm Water Management Study/Control Plan ("Storm Water Control Plan") which was approved by the City of Watsonville which includes operation and maintenance directions and which includes an "Agreement Regarding Maintenance of Structural or Treatment Control BMPs (Best Management Practices)" providing for the inspection, monitoring, maintenance and reporting of same to the City of Watsonville and conducting said activities in accordance with the operations and maintenance directions of the Storm Water Control Plan. Pursuant to the Storm Water Control Plan, upon the close of escrow for the sale of the first Residence Lot in Phase 1a of the Development and for Phases 1B, 1C, 2 and 3 upon annexation of such Phases, the Association shall, among other things, (i) succeed to the rights and privileges, duties and obligations of Declarant under the Storm Water Control Plan, and (ii) inspect all storm water facilities not otherwise maintained by the City at least once a year. Said inspection shall occur within the first week of October. Additional inspections shall occur after major rain events and after the first significant rain event. The inspections and the facilities to be maintained shall include all storm drain pipes, inlets, area drains, sediment traps, filters, bioretention areas, manholes, flow control structures and out fall energy dissipaters. For further details, Members are advised to review the Storm Water Control Plan on file with the Association;

(c) It is the intent of Declarant that storm water runoff from any Phase in the Development may be collected and discharged into the storm lines, storm structures, and storm facilities (including any detention basins) located in such Phase or in any Phase of the Development. Accordingly, until such time as Phases 1B, 1C, 2 and 3 are annexed into the Development, Declarant grants to the Association and to each Owner of a Residence Lot in Phase 1A a non-exclusive easement over, under, across and through those storm lines, storm structures, and storm facilities (including any detention basins) located in Phases 1B, 1C, 2 and 3 for purposes of collecting and discharging storm water runoff from the Common Area and Residents Lots located within Phase 1a into the storm lines, storm structures, and storm facilities (including any detention basins) located in Phases 1B, 1C, 2 and 3. Similarly, upon annexation of a subsequent Phase into the Development, Declarant grants to the Association and to each Owner of a Residence Lot in such subsequent Annexed Phase a non-exclusive easement over, under, across and through those storm lines, storm structures, and storm facilities (including any detention basin) located in Phases 1A and any other previously Annexed Phase for purposes of collecting and discharging storm water runoff from the Common Area of all of the Phases and the Residence Lots within such Phases into the storm lines, storm structures, and storm facilities (including any detention basins) located in such Phases.

Upon annexation of Phase 1B and/or Phase 1C into the Development, the storm lines, storm structures, and storm facilities (including any detention basins) located in such Phase(s) shall become part of the Development to be maintained as provided in sub-sections (a) and (b) above; provided that Declarant, at its cost and expense, shall maintain and repair such storm lines, storm structures, and storm facilities (including any detention basins) located in Phases 1B and 1C until such time as such Phases are annexed into the Development. Upon such annexations, the easements over Phases 1B and/ or 1C as the case may be shall terminate without the necessity of any further action to effect such termination; and

(d) The Members shall keep their respective Lots free from any obstruction of the improvements and facilities mentioned above and shall permit no landscaping

or permanent structures to be erected on their respective Lots which would interfere with the purposes for which the above improvements were installed or constructed.

(4) ***Sanitary Sewer System.***

(a) The sanitary sewer lines, facilities and structures located within the public right of way of Santa Catalina Avenue and San Luis Avenue, that "20' wide SSE", and the 8" sanitary sewer line located within Lilac Lane, as shown on Tract Map 1587, shall be maintained by the City of Watsonville. The sanitary sewer lines, facilities and structures located within the Common Area of the Development, shall be maintained and repaired by the Association, and the cost thereof shall be included in the Association's budget for assessment against the Residence Lots as provided in Article VI.

(b) Each Member at his/her cost shall be responsible for maintaining and repairing the house waste line or lines and structures located on their Lot that connect to the sewer lines located in the areas described in sub-paragraph (a) above; and

(c) The Owners of the four (4) Lots lying easterly of Peony Lane located in Phase 1C, at their respective cost, shall each be responsible for maintaining and repairing the house waste lines and structures (i) located on their Lot, and (ii) which run from their respective Lot to the public sanitary sewer line located in Santa Catalina Avenue. All maintenance and repair work in Santa Catalina Avenue shall be performed by a contractor licensed and bonded in the State of California and proof thereof shall be delivered to the Board prior to commencement of such work).

(5) ***Water Lines.***

(a) The water lines, facilities and structures located within the public right of way of Santa Catalina Avenue, San Luis Avenue and Parcel A of Tract Map 1587, up to and including the individual water meters serving the Residence Lots shall be maintained and repaired by the City;

(b) Water to each of the Residence Lots is provided by a separate, individual line or lines located in a trench in the "PUE Areas" as labeled on the Tract Map, in the Common Area, or in Parcel A, as the case may be, running from the respective meters to the individual Residence Lots. Such line or lines shall be maintained and repaired by the Association, and the cost thereof shall be included in the Association's budget for assessment against the Residence Lots as provided in Article VI. That portion of the line or lines located on the Lot that extend from the trench to the Residence on the Lot shall be maintained and repaired by the Owner of the Lot.

(B) ***Miscellaneous.***

(1) Wherever Utility Lines or any portion thereof owned by the Member as above set forth lie in or upon Residence Lots owned by other than the Member served by the Utility Lines or within the Common Area, the Members served by the Utility Lines shall have the right (for themselves or for utility companies), and are hereby granted an easement to the full extent necessary therefor, to enter upon Residence Lots or Common Area in or upon which these Utility Lines or any portion thereof lie to repair, replace and generally maintain said Utility Lines as necessary. If entry into the Common Area or a Residence Lot is required hereunder, the party making such entry must give reasonable notice to the Association and/or Member who owns such Residence Lot.

(2) Unless otherwise the responsibility of the City or respective purveyor, any damage to a Residence Lot, Common Area or Common Facility caused by a damaged or defective Utility Lines or by the faulty repair or maintenance thereof shall be repaired by the Owner of the Utility Lines at his/her cost. However, if it can be determined that the damage to the Residence Lot, Common Area or Common Facility was caused by damage to, or faulty repair or maintenance of, the Utility Lines by a Member other than the Owner of the Utility Lines,

the Member causing the damage to, or faulty repair or maintenance of, the Utility Lines shall repair the damage to the Residence Lot, Common Area or Common Facility at his/her cost.

(3) Wherever such Utility Lines serve more than one Residence Lot, the Members who own each Residence Lot served by the Utility Lines shall be entitled to the full use and enjoyment of the portions of the Utility Lines that service his/her Residence Lot.

(4) If one or more Members shall fail to repair any Utility Line, Residence Lot, Common Area or Common Facility as hereinabove specified, the Association shall have the right to make such repairs. The costs thereof may be recovered by a special assessment upon the Residence Lot or Lots of the responsible Members pursuant to Section 6.03(A)(1) below.

(5) Except for those Utility Lines which each Member is deemed to own under subsection (A) above, the Association shall maintain any and all utility lines and facilities located in, on, or under the "PUE Areas" or "5' SDE", as labeled on Tract Map No. 1587 and the Common Area and Common Facilities (the "Common Lines"), if not otherwise maintained by the respective utility companies as set forth in subsection (A) above. The Association shall pay all charges for utilities supplied to the Development, except for those metered or charged separately to the Residence Lots, and the cost thereof shall be included in the Association's budget for assessment against the Residence Lots as provided in Article VI, provided that:

(a) If any Common Lines in the Development or in, on, or under the "5" SDE" as labeled on Tract Map No. 1587, become clogged, stopped-up, or require repair, the Association shall furnish such maintenance, replacement or repair as set forth above. However, if it can be determined that the cause of such clogging, stoppage or repair originated in any particular Residence Lot, the Association may charge the Member who owns such Residence Lot the cost of such repair, replacement or maintenance. If a Member fails to pay such costs, the Association may, among Section 6.03(A)(1) other remedies available to it, collect them by levying a special assessment upon the Residence Lots of the Members who are responsible therefor under the provisions of this subsection, pursuant to Section 6.03(A)(1) below.

(b) If any such Common Line is damaged or destroyed by an act of a Member or any of his/her agents or guests or members of his/her family, whether or not such act is negligent or culpable, then the Association shall replace or repair it to as good a condition as formerly existed, and the cost thereof shall be reimbursed to the Association by the Member. However, if the repair is covered by insurance carried by the Association, the Association shall make the repair, and the Member shall pay any deductible under the insurance policy. If the responsible Member fails to pay the deductible, the Association shall have the right to do so. If the Association undertakes the replacement or repair of any Common Line, including the payment of any deductible for which a Member is liable, the Association may, among other remedies available to it, recover the cost thereof through a special assessment against the Lot of the responsible Member pursuant to Section 6.03(A)(1) below.

(6) To the extent any Residence Lot includes a fire sprinkler system serving the Residence Lot, the water or other utility lines constituting the system that are located in the Common Area and Common Facilities of the Development shall be maintained by the Association or purveyor as above set forth. The sprinkler heads and any water line or utility line located in or on each individual Residence Lot shall be owned and maintained by the Member who owns the Residence Lot.

4.04 Easements for Benefit of Association and Declarant; Grants of Easements. The Association shall have an easement over, under, across and through each Residence Lot where necessary for any construction, maintenance, repair or other functions required of the Association by this Declaration. Declarant shall have an easement over, under, across and through the Common Area and each Residence Lot where necessary for any construction, maintenance and repair or other functions required of Declarant by this Declaration and for entry onto adjacent property in connection with the development of additional Phases of the Development. Declarant shall have the right to grant nonexclusive specific and/or blanket easements in, on, over, under and through

the Common Area in each Phase for all utility services and purposes and for such other uses as Declarant may deem appropriate. Declarant's right to grant such easements hereunder shall cease after the sale of the first (1st) Residence Lot in each respective Phase. Subject to the provisions of Sections 4.05 and 14.06(D) below, the Board shall have the right in the name of the Association and all of the Members as their attorney-in-fact to grant nonexclusive and specific as well as blanket easements in, on, over, under and through the Common Area to any public agency or authority, or other persons or entities, to accomplish any other purpose that in the sole discretion of the Board is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area.

4.05 *Grant of Exclusive Use Over Common Area; Installation of Solar Energy Systems.*

(A) Except as otherwise provided in this Declaration and/or in the Bylaws or as specifically provided pursuant to Civil Code Section 4600, any grant of exclusive use by the Board of any part of the Common Area and Common Facilities to any Member for any purpose, must be approved in writing by sixty-seven percent (67%) of the Voting Power of the Association pursuant to Civil Code Section 4600. Written notice of any such transfer or dedication shall be sent to every Member not less than seven (7) days, nor more than thirty (30) days, in advance of the execution of such instrument by the Board. Any measure placed before the Members requesting that the Board grant exclusive use of any portion of the Common Area or Common Facilities shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Common Area or Common Facilities. In addition, any such dedication or transfer may be subject to the provisions of Section 14.06(D).

Any such grant of exclusive use over a portion of the Common Area shall be in writing and shall provide among other things that (a) the Member maintains such Common Area; and (b) the Member defends, indemnifies and holds the Association harmless against any claim arising out of the use of such portions of the Common Area and provides liability insurance for such Common Area as provided in Section 7.07(B) naming the Association as an Additional Insured.

(B) Among the items excepted from the voting requirements and Civil Code Section 4600 is installation of and use of a solar energy system for household purposes on the roof of a building where the Owner resides or a garage, or on a carport adjacent to the building, or on a multi-family common area roof (see Civil Code Sections 714, 714.1 and 4746). Installation of any such solar energy system shall conform to and satisfy the requirements of said Civil Code Sections 714, 714.1 and 4746 as applicable. The Members and the Board are advised to carefully review the Civil Code Sections for a full understanding of these matters.

4.06 *Easements Reserved and Granted.* Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Residence Lot, and shall thenceforth be deemed covenants running with the land for the use and benefit of the Residence Lots.

4.07 *License.* The Association may license portions of the Common Area to a Member in a manner consistent with Civil Code Section 4600 provided among other things that the license shall be in writing and that (a) the license is revocable at will by either party upon five (5) days written notice to the other party in the manner set forth in Exhibit "B" attached hereto; (b) the Member maintains such Common Area; (c) the Member defends, indemnifies and holds the Association harmless against any claim arising out of the use of such portion of the Common Area; and (d) upon termination of the license such Common Area shall be restored by the licensee-Member to its condition as existing upon the grant of the license or as directed by the Board provided that the latter is not of greater cost than restoring such area to its preexisting conditions.

4.08 *Delegation of Use.* Any Member may delegate his/her right of enjoyment to the Common Area and Common Facilities to persons who are actually residing in his/her Residence and who are members of his/her family, his/her guests, tenants or contract purchasers. The guests

of a Member or a lessee shall be entitled to use the Common Area and Common Facilities, subject to the Management Documents.

4.09 Physical Access to Residence Lots. Unless otherwise permitted under Civil Code Section 4510, the Association shall not deny any Member or lawful occupant physical access to his/her Residence Lot.

4.10 Partition. Except as otherwise may be required under Section 7.15(E), Article IX, or Section 14.04 below, there shall be no judicial partition of all or any part of the Development, and Declarant and/or any person acquiring an interest in all or any part of the Development absolutely waives the right to partition the Real Property in kind and waives the right to seek partition for the purpose of a sale of the Real Property or any portion thereof. However, if any Residence Lot is owned by two (2) or more Members as tenants in common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such Members.

4.11 Marketing of Residence Lots. Pursuant to Civil Code Section 4730, the Association may not, among other things:

(A) Establish an exclusive relationship with any broker through which the sale or marketing of any Residence Lot is required to occur; or

(B) Adopt any rule or regulation that arbitrarily or unreasonably restrict the ability of any Member to market such Member's Residence Lot. Any such rule or regulation shall be deemed void.

4.12 Completion of Common Area Improvements; Enforcement of Bonded Obligations. The Members acknowledge that Declarant is not obligated to complete construction of Common Area improvements or Common Facilities in any Phase of the Development prior to issuance of a Public Report for such Phase, provided that in such event, Declarant shall have posted a bond, letter of credit or other arrangement ("Bond") to secure performance by Declarant to complete the improvements. If the Common Area improvements or Common Facilities to be constructed in any Phase of the Development by Declarant have not been completed prior to issuance of a Public Report for such Phase, and in the event the Association is the obligee under a Bond to secure performance by Declarant to complete such improvements, the Association may enforce the obligations of Declarant and the surety under the Bond, as follows:

(A) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any such improvement, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

(B) A special meeting of Members may be called for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question. The meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total Voting Power of the Association.

(C) Any such vote shall be by Members of the Association other than Declarant at a special meeting called for the purpose set forth in subsection (B) above.

(D) A vote of a majority of the Voting Power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

4.13 *Parking.* There are a total of two hundred thirty-seven (237) parking spaces located in all Phases of the Development, including:

(A) One hundred eighty (180) garage spaces.

(B) Fifty-seven (57) open parking spaces. Said parking spaces shall be for use by persons visiting the Residence Lots in the development and shall not be for use by members or occupants of any lot.

(C) Guest parking shall include at least one van accessible stall.

4.14 *Affordable Housing Requirements.* Declarant has entered into an Affordable Housing Agreement (“Sunshine Gardens”) - “Affordability Agreement” - with the City of Watsonville, California, recorded on November 30, 2016, as Instrument Number 2016-0047326 in the office of the Recorder of Santa Cruz County, California. The Affordability Agreement requires Declarant to make available, for purchase by median income households, moderate income households, or above moderate income households, as the case may be, a total of seventeen (17) of the Residence Lots in all Phases of the Development, in accordance with the terms and conditions set forth therein.

To assure that each of the Lots referenced in the Affordability Agreement remain affordable and available for purchase by median income households, moderate income households, or above moderate income households as above set forth, the Affordability Agreement requires that a Buyer’s Occupancy and Resale Agreement with Option to Purchase – City of Watsonville Inclusionary Housing Program (“Resale Agreement”) be recorded upon the initial sale of each such Lot, obligating the Owners to comply with the resale control provisions set forth therein (which are set forth in a copy of such Resale Agreement attached hereto as Exhibit “E”). Unless otherwise provided in the Affordable Housing Agreement or in the Resale Agreement, the term of such resale control provisions as set forth in the Resale Agreement shall be for a period of a minimum of forty-five (45) years, commencing upon the date of the initial sale of the Residence Lot.

4.15 *Offers of Dedication Pursuant to Tract Map No. 1587.* Declarant has offered to dedicate to the City of Watsonville the following areas located in the Development: Parcel A, Santa Catalina Avenue, San Luis Avenue, a 20’ wide sanitary sewer easement across and extending from Lilac Lane to the northwest boundary of the Development, a 16 foot wide emergency vehicle access easement extending from Lilac Lane to the northwest boundary of the Development, and an easement for public use over those areas designated trail easement on Tract Map 1587. The City of Watsonville has rejected at this time the offers of dedication from Declarant relating to the aforementioned areas. Until the City of Watsonville accepts the offers of dedication, Declarant or the Association shall pay the cost for the repair and maintenance of said areas. Upon the City of Watsonville’s acceptance of the offers of dedication of said areas, the City of Watsonville shall pay the cost for the repair and maintenance of said areas, including, but not limited to roadway improvements, sidewalks, and street trees. For example, Declarant shall maintain the landscaping and other related vegetation in the Common Area adjacent to the easement for public use over those areas designated trail easement in Lot C of Tract Map 1587. If an offer of dedication of any of the above areas is not accepted by the City, and such area(s) is/are later annexed into the Development, the Association shall pay the cost for repair and maintenance of such area(s). Upon annexation of Lot C into the Development, the Association shall maintain such landscaping and related vegetation.

4.16 *Fences; Walls Maintenance and Repair.*

(A) **Boundary Walls and Fences:**

(i) **Residence Lots 48-60.** Those portions of the boundary wall or fence structure that runs along the rear yards of Residence Lots 48 through 60 shall be maintained, repaired and reconstructed by the Owner of the respective Lot upon which such portion of the

boundary wall or fence is located at his/ her cost and expense in the condition originally built by Declarant or in a uniform condition as otherwise determined by the Board pursuant to Article XII, reasonable wear and tear excepted. If an Owner fails to maintain, repair or reconstruct any such boundary wall or fence on his/her Lot as set forth above, the Association may enter onto the Lot and perform the necessary maintenance, repair or reconstruction. If the Association undertakes such maintenance, repair or reconstruction for which an Owner is liable hereunder, the Association may recover the cost thereof through a special assessment against the Lot of such Owner pursuant to Section 6.03(a)(i).

(ii) **Peony Lane.** Upon annexation of Phase 1C into the Development, the Association shall maintain, repair and reconstruct the boundary wall structure generally located in Common Area Lot L (Peony Lane) which Lot is shown on the recorded tract map of the Development. The Association shall have a non-exclusive easement over, under, across and through those Residence Lots adjacent to or including such wall structure for the purposes above set forth. Such wall shall be maintained in a condition commensurate with that existing at the time of construction of the wall by Declarant or in a uniform condition as otherwise determined by the Board pursuant to Article XII, reasonable wear and tear excepted.

(B) **Front Yards:** The Lot Owner shall maintain, repair and reconstruct the yard areas of its Lot and the fence structures located in its yards.

(C) **Retaining Walls:**

(i) **Association maintains.** Upon annexation of Phase 3 into the Development, those retaining walls located on **Common Area Lot C, and Peony Lane [Common Area Lot L] and adjacent to Lot 83** as shown on Exhibit H attached hereto, shall be maintained, repaired and reconstructed by the Association. The Association shall have a non-exclusive easement over, under, across and through such areas and Lot for the purposes set forth above. Such retaining walls shall be maintained in a condition commensurate with that existing at the time of construction of the walls by Declarant or in a condition as otherwise determined by the Board pursuant to Article XII, reasonable wear and tear excepted. The retaining wall located on Lot 62 and Lot 63 shall be maintained by the Association; the Association shall have a right to enter Lot 62 and Lot 63 to undertake such maintenance after notice to the Lot Owners of Lot 62 and Lot 63.

(ii) **Owners maintain.** Upon annexation of Phase 3 into the Development, the retaining walls located on Lots 78, 79, 80, 81, 82 and 83 shall be maintained, repaired and reconstructed by the respective Owners of such Lots at their respective cost and expense in the condition originally built by Declarant or in a condition as otherwise determined by the Board pursuant to Article XII, reasonable wear and tear excepted. Each such retaining wall shall be deemed shared walls owned in equal shares as tenants in common by the Owners of the Lots sharing those walls ("shared walls"). For purposes of this Section, the shared walls located on these Lots is shown on Exhibit "I" attached hereto. The Owners of such shared walls shall be subject to the following provisions:

(aa) Each of the adjoining Owners of Lots sharing a shared wall shall have equal rights to maintain, repair, and reconstruct the shared wall, except that each shall have the exclusive right to otherwise use that portion of the wall on his/her side. However, no owner shall use any portion of the wall so as to interfere with the use and enjoyment of the other owner. The Owners shall assume the burdens and shall be entitled to the benefits of the provisions of this section and the general rules of law regarding party walls with respect to such walls, and liability for property damage due to negligence or willful acts or omissions shall also apply.

(bb) The cost of reasonable repair, maintenance and replacement of the shared wall shall be shared equally by the Owners whose Lots adjoin the wall.

(cc) The Owners of such respective Lots shall have reciprocal easements appurtenant to each such Lot over the other adjoining Lot for the purpose of

accommodating any encroachment of a shared wall and for the repair, maintenance and reconstruction functions required under this Section.

(dd) If the Owners fail to maintain, repair or reconstruct such retaining wall as set forth above, the Association may enter onto the respective Lots and perform the necessary maintenance, repair or reconstruction. If the Association undertakes such maintenance, repair or reconstruction for which the Owners are liable hereunder, the Association may recover the cost thereof through a special assessment against the respective Lots of such Owners pursuant to Section 6.03(a)(i).

(D) **Side-Yard Fencing.** When any of Lots adjoins that of his/her neighbor desires to construct a fence along the side yard of their respective Lots, the Owner shall first seek approval from the adjoining Owner. If both Owners agree, they shall seek approval from the Board in the manner set forth in Article XII. If so approved, such fencing shall be maintained, repaired and reconstructed by the respective Owners of such Lots at their respective cost and expense in the condition originally approved by the Board, reasonable wear and tear excepted. Such fencing shall be deemed shared fencing owned in equal shares as tenants in common by the Owners of the Lots sharing the fence. The Owners of such shared fencing shall be subject to the same provisions as are set forth in Section (C)(ii)(aa), (bb) and (cc) above.

ARTICLE V

Uses of the Property

5.01 Residential Use. The Real Property included within the Development is hereby restricted to residential use. Except as provided in Article XII below, no building or structure shall be erected or placed, temporarily or permanently, upon the Real Property other than buildings and structures that are substantially the same as those originally erected by Declarant, and the Common Facilities used in connection therewith. If any Residence or any Common Facility is damaged or destroyed by fire or other casualty, unless prohibited by law, the Association shall reconstruct the same in accordance with the provisions of Article VII below and substantially in accordance with the original plans and specifications, so that the exterior appearance resembles that existing prior to the damage or destruction.

Declarant shall have the right to designate, from time to time, and use, one or more Residence Lots owned or leased by Declarant for model homes and sales offices in any Phase of the Development. This right shall terminate three (3) years after issuance of the Public Report for the Phase in which the model homes or sales offices are located.

5.02 Restriction on Use. The Real Property shall be subject to the following restrictions:

(A) Each Residence Lot shall be used as a residence for a single family in compliance with the approvals for the Development and applicable zoning regulations. The number of persons residing in a Residence Lot shall not exceed two (2) persons per bedroom, plus one (1) extra occupant. Guests may visit the Residence Lots, but shall not reside in the Residence Lots. For purposes hereof, a guest visit shall be considered a period not to exceed forty-five (45) days in any calendar year.

(B) Residences and Residence Lots shall not be used, either directly or indirectly, for any business, commercial, manufacturing, mercantile or other non-residential purpose by any Member or occupant thereof, or by any family member, guest, employee, agent or invitee of any Member or occupant of any Residence or Residence Lot, unless such use is specifically authorized by applicable law, or:

(1) Does not involve any visible signs of commercial use apparent from outside the indoor portion of such Residence;

(2) Does not involve any regular conspicuous business activity;

(3) Does not involve regular deliveries or pick-ups to or from the Residence Lot or any part of the Development,

(4) Is conducted solely within the confines of the indoor portion of such Residence;

(5) Does not normally involve customers, clients or patients visiting the Residence Lot or any part of the Development;

(6) Does not otherwise interfere with the residential nature or character of the Development or the quiet enjoyment of any Member or occupant of any other Residence Lot; and

(7) Is in compliance with all zoning, labor, business and other applicable local, county, state and federal ordinances, codes, statutes and regulations.

If and when any non-residential use of a Residence Lot is declared, by the Board, to be in violation of this subsection (B), such non-residential use shall be discontinued immediately, or as otherwise determined by the Board, and shall not be resumed without prior written authorization from the Board.

(C) No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Development, except that aquatic animals kept within an aquarium (an "Aquarium") and/or domesticated dogs, cats, birds, or other animals as agreed to by the Board (collectively referred to hereinafter, as "Pets"), may be kept in a Residence if they are not kept, bred or maintained for any commercial purposes and if they do not become a nuisance to other Members or occupants of the Development. If and when any Aquarium or Pet is declared to be a nuisance by the Board, it shall be removed from the Development immediately or as otherwise determined by the Board. The owners of Pets shall be responsible for the cleanup of any litter left by such Pets in the Common Area. Dogs shall be kept on a leash when in the Common Area. The foregoing notwithstanding, no more than two (2) such Aquariums and two (2) Pets may be kept in any Residence Lot.

(D) No commercial advertising signs, billboards or unsightly objects shall be erected on the Development, except that a sign of customary and reasonable dimensions may be used for the sole purpose of advertising for sale or lease any Residence Lot. This provision shall not be applicable to Declarant.

Pursuant to Civil Code Section 4705, one (1) flag of the United States, made of fabric, cloth or paper may be displayed from a staff or pole within a Residence Lot or in the window of a Residence. Other noncommercial signs, posters, flags or banners may be displayed as permitted under Section 4710 of the Civil Code. Non-commercial signs and posters shall not exceed nine (9) square feet in size, and non-commercial flags or banners shall not be more than fifteen (15) square feet in size.

(E) No obnoxious or offensive activity, including but not limited to repair and restoration of automobiles or other motorized vehicles, shall be carried on upon any portion of the Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Members, occupants, or the neighborhood or which shall increase the rate of insurance on any adjacent Residence Lot, Common Area or Common Facility.

(F) No clothesline, storage pile or other unsightly object shall be maintained on the Development, except by or with the written consent of the Board, and there shall be no exterior drying or laundering of clothes or other materials in any Residence Lot or the Common Area. All rubbish, trash or refuse shall be deposited at a location provided for each Residence Lot, or at such other location as may be designated from time to time by the Board. Woodpiles may be maintained upon the Residence Lots, provided they are clean and attractive in appearance as determined by the Board.

(G) All driveways, sidewalks, entries and passages outside of the Residence Lots shall remain unobstructed and shall not be used for purposes other than ingress and egress to

and from the Residence Lots, except that parking spaces designated by the Board may be used for parking vehicles.

(H) With the exception of propane tanks used in barbeque equipment, no tank or other receptacle for the storage of gas or flammable liquid shall be installed upon or in the Development unless such installation is done by the Declarant, the Association or has been approved by the Board.

(I) No boat, trailer, mobile home, recreational vehicle, truck having a carrying capacity of greater than one-half (1/2) ton, van having a seating capacity in excess of eight (8) persons, or similar equipment shall be parked or kept within the Development, unless placed and maintained within an enclosed garage.

(J) The occupants of each Residence Lot shall have not more than a total of two (2) automobiles or other motorized vehicles customarily used for general transportation within the Development at any one time. All such vehicles shall be maintained in running order. No noisy or smoky vehicles shall be kept or operated in the Development. No unlicensed motor vehicles shall be kept or operated in the Development. The Association may establish rules and regulations from time to time for the parking of such vehicles in the Development.

(K) No awnings, sunshades or screen doors, other than those originally installed, shall be installed without the prior written approval of the Board. All window coverings visible from the exterior of the Residences shall be of a neutral tone and of material approved by the Board.

(L) No roofs shall be erected over any patio and/or balcony on any Residence Lot, and any fence (including any supplemental apparatus attached thereto) surrounding or adjacent to any portion of a Residence Lot shall not be greater than six (6) feet in height, without the prior written approval of the Board. No hot tub, whirlpool spa, Jacuzzi tub or similar equipment of any kind shall be installed on any deck or balcony.

(M) No fence, statuary or structure of any kind shall be installed or erected in or upon any Residence Lot or in the Common Area without the prior written approval of the Board.

(N) No exterior radio antenna shall be used or installed in the Development. No exterior video or television antenna (including a satellite dish) that has a diameter or diagonal measurement of more than thirty-six (36) inches shall be used or installed in the Development. A video or television antenna (including a satellite dish) that has a diameter or diagonal measurement of thirty-six (36) inches or less may be used and installed by a Member in or on his/her Residence Lot, provided that the antenna or satellite dish is not visible from any street and is screened from view from the other Residences or Common Area provided that such screening does not unreasonably interfere with signal strength or cost an unreasonable amount of money. The Board may establish reasonable restrictions on the installation of video and television antennae (including satellite dishes) that have a diameter of thirty-six (36) inches or less consistent with the foregoing and with Civil Code Section 4725.

(O) A landscaping plan for the Development (the "Landscape Plan") has been submitted to and approved by the Planning Commission of the City of Watsonville. The Association shall landscape and maintain the Common Area and Common Facilities in accordance with the approved Landscape Plan and in accordance with Civil Code Section 4735. Lot Owners of Detached Residence Lot described above as Residence Lots 1-6; 48; 59-60; and 69, shall maintain the landscaping within their Lots as provided in Section 8.03 Facilities in accordance with the approved Landscape Plan. Common Area landscaping shall be under contract for maintenance with a qualified landscape company approved by the City. Upon execution of a purchase contract, the Declarant shall provide copies of the Landscape Plan to the buyer and the Landscape Plan will allow the buyer to select from one (1) of three (3) options based on the specific Unit type and location of the Unit provided by the Declarant, or it will allow the buyer to create his/her own plan based on the approved Plant Pallet adopted by the City when approving the

Landscape Plan. If a buyer chooses to create his/her own plan, said plan must be approved in writing by the Declarant. The landscaping included in a plan selected by the buyer, or otherwise approved by Declarant, shall be installed by Declarant, and the cost shall thereof be reimbursed to Declarant by the buyer through escrow. The Member shall maintain the private yard areas, if any, located in his/her Residence Lot in accordance with the approved Landscape Plan. Neither the Association nor the Members shall modify or alter the Plan without the prior written approval of the City of Watsonville Public Works Director or their designee. The Association shall require that all landscaping in the Common Areas or on the Residence Lots is continuously maintained in a healthy and thriving condition. Dead or diseased material shall be promptly replaced with like material.

(P) Bicycles shall be parked and stored within the Residence Lot (including the garage) and not in the Common Area of the Development.

(Q) Garages shall be used only for parking those vehicles referred to in subsections (I) and (J) above and limited storage, which does not interfere with parking by the number of such vehicles for which the garage was originally designed, and shall not be converted for living or recreational activities. Garage doors shall remain closed except when occupants are entering, leaving or working in or around their garages.

(R) No exterior carpeting, mats or similar materials that trap moisture below them shall be located on any deck or balcony. Similarly, no plant(s) or similar vegetation shall be located on any deck or balcony in the Development, unless placed in pots or other containers that allow sufficient airflow between the bottom of the pot and the surface of the deck or balcony, so as to prevent water damage or dry rot from occurring on the deck or balcony or improvements adjacent to such decks or balconies.

(S) Exterior lighting shall be low level and directed in such a manner that direct lighting or glare will affect neither adjacent properties nor public streets or walkways.

(T) The Association may impose reasonable restrictions on the installation, maintenance, repair, replacement, removal and use of electric vehicle charging stations in the Development in a manner consistent with the provisions of Civil Code Section 4745; provided that the Association may not effectively prohibit or unreasonably restrict the installation or use of an electric vehicle charging station.

(U) Lots 61-83 contain permanent structural fill slopes under and beneath the slabs and structures located on said Lots. No occupant or Member shall be permitted to cause the permanent structural fill slopes to be moved, excavated, drilled or otherwise altered as disturbing the permanent fill slopes will undermine the structures and/or facilities located upon the respective Residence Lot.

5.03 Leases. No Member is permitted to lease all or any portion of any Residence Lot for transient or hotel purposes. No Member may lease less than an entire Residence Lot, without the prior written consent of the Board. Any lease of any Residence Lot shall provide that, in all respects, such lease is subject to the provisions of the Management Documents. Such lease shall further provide that any failure by the lessee to comply with the terms of the Management Documents shall be a default under the lease. All leases and rental agreements of Residence Lots shall be in writing and shall be for a term of thirty (30) days or more. Any Member leasing or renting any Residence Lot shall notify the Board in writing of: (i) the names, telephone numbers and email addresses of all persons occupying such Residence Lot; (ii) the address where such Member resides, if not within the Development and the Member's telephone number and email addresses; and (iii) the date the Member acquired title to his/her Residence Lot. Notwithstanding any agreement between any Member and any prospective tenant to the contrary, the leasing or rental of any Residence Lot shall not operate to relieve the Member thereof of the primary responsibility for compliance with all provisions of the Management Documents, including the payment of all charges and assessments.

In the event the provisions of this Section 5.03 are later amended to prohibit such rentals or leases, no such amendment shall be effective as to any Member who acquired title to his/her Residence Lot prior to the date of such amendment, except as otherwise provided in Civil Code Section 4740.

Notwithstanding the above, no Owner of a Residence Lot which is subject to the Affordability Agreement and/or Resale Agreement referenced in Section 4.15 above, shall be permitted to lease all or any portion of his or her Residence Lot for any purposes.

ARTICLE VI

Assessments and Liens

6.01 Assessment Power. Each Residence Lot within the Development and the improvements thereon, except such improvements as are owned by the Association, shall be subject to general and special assessments and Liens to secure their payment. The Association, by the Board, shall have the sole authority to fix and establish the amounts of the general assessments provided for in this Declaration and the amounts of such interest, costs and late charges for the late payment or nonpayment thereof. The power of assessment shall vest as to Residence Lots in Phase 1A on the first (1st) day of the month following the first (1st) conveyance of a Residence Lot in Phase 1A under authority of a Public Report, or on the first (1st) day of the month following the conveyance of any Common Area to the Association, whichever shall first occur. As to each remaining Phases, the power of Assessment shall commence after the Annexation of such Phase, on the first (1st) day of the month following the first (1st) conveyance of a Residence Lot in such Phase under authority of a Public Report, or on the first (1st) day of the month following the conveyance of the Common Area in such Phase to the Association, whichever shall first occur. The Association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

The Assessments levied by the Association shall be used exclusively to promote the common interests, recreation, health, safety and social welfare of all the residents in the Development and to enable the Association to perform its obligations hereunder.

6.02 General Assessments. General assessments shall be fixed and established annually or more often by the Board and shall be collected monthly by the Association, as follows:

(A) **Budget; General.** By resolution duly adopted, the Board shall have in effect at all times those certain budgets consisting of the following:

- (1) a Cost Center Budget for Townhomes Phase 1C;
- (2) a Cost Center Budget for Townhomes Phase 2;
- (3) a Cost Center Budget for Townhomes Phase 3;
- (4) a Base Budget for Phase 1A;
- (5) a Base Budget for Phase 1B;
- (6) a Base Budget for Phase 1C;
- (7) a Base Budget for Phase 2; and
- (8) a Base Budget for Phase 3.

The foregoing shall generally be referred to as the "Operating Budgets".

Each Budget shall set forth the cash requirements and reserves for future maintenance or contingencies reasonably necessary and proper for the management, operation, maintenance, care and improvement of the respective facilities and improvements in accordance with the provisions of the Management Documents. Except as otherwise provided below, the Board may modify any budget at any time by resolution to meet changed circumstances or unforeseen events. The Members acknowledge, accept and agree that the operating budget for Phase 1A and each annexed Phase of the Development may be revised upon the annexation of subsequent Phases in the Development in accordance with those budgets for such Phases as are reviewed by the California Department of Real Estate under authority of a Public Report for such Phase. The Notices of

Annexation of Territory for the subsequent Phases may include revisions to this Section 6.02 as necessary to reflect the foregoing.

(B) **Annual Budget.** The Board shall, at a regular or special meeting held during the month of October of each year or at such other time as may be designated by the Board, make its estimate of cash requirements and reserves for the ensuing calendar year. Following the estimation of cash requirements and reserves, the Board shall prepare an annual budget for the ensuing calendar year based thereon and shall distribute the budget not less than thirty (30) days and not more than ninety (90) days prior to the beginning of the calendar year as provided in Section 7.03 of the Bylaws. If the Board elects a fiscal year other than the calendar year, such estimate shall be made at least two (2) months prior to the beginning of that fiscal year, and the annual budget for the ensuing fiscal year shall be prepared and distributed to the Members as set forth above.

(C) **General Assessments.** Subject to the terms of subsection (D) below, the Board may from time to time, by resolution, set general assessments based upon duly adopted budgets as provided above or modify any budget previously made and raise or lower the amount previously estimated as the cash requirements and reserves of the Association for all or part of a year. The Board may raise or lower the amount of the general assessment to correspond to such revised budget, provided that no such determination by the Board shall have any retroactive effect on the amount of assessment payable by any Member for any period elapsed prior to the date of such determination. Such estimate of cash requirements and reserves shall be apportioned among all the Residence Lots as provided herein, and the sum allocable to each Residence Lot shall be the general assessment against such Residence Lot for the ensuing calendar year or other period.

(D) **Limit on Increased Assessments.**

(1) Annual increases in general assessments for any fiscal year shall not be imposed unless the Board has complied with Section 5605(a) of the Civil Code;

(2) The Board may not impose a general assessment hereunder, applicable either to the Cost Center Budgets for Townhomes Phases 1B, 1C or 2 or to the Base Budgets for Phases 1B, 1C or 2 which is more than twenty percent (20%) greater than the general assessment for the immediately preceding fiscal year without the vote or written consent of Members constituting a quorum of the Voting Power of the Association casting a majority of the votes, pursuant to Civil Code Section 5605(b). For purposes hereof, a quorum shall mean more than fifty percent (50%) of the Voting Power of the Association. Any vote of the Members as set forth above shall be conducted in accordance procedures set forth in Civil Code Section 5100, *et seq.*

The Board may not impose a general assessment hereunder which is more than twenty-five percent (25%) greater than the general assessment for the immediately preceding fiscal year without complying with the provisions of Section 14.06(D) below.

(E) **Apportionment of Assessment.** The general assessments shall be apportioned among the Residence Lots as follows:

(1) Those allocations set forth in the Association's Cost Center Budget for a Phase shall be apportioned among the Residence Lots subject to such Cost Center Budget in the manner set forth in such Cost Center Budget.

(2) Those allocations set forth in the Association's Cost Center Budget for Phases 1A, 1B and 2 for roof reserves, painting reserves, and reserves for wood-destroying pests or organisms applicable to improvements located on the Residence Lots, all Risk Hazard Insurance, earthquake insurance (if any), and flood insurance (if any) shall be apportioned among the Residence Lots in each respective Phase upon the basis of the ratio of the square footage of the floor area of the Residence located on the Residence Lot to be assessed to the total square footage of floor area of all Residences included in such Phase. For purposes of this subsection (1), the square footages of the Residences are more particularly described in Exhibit "J";

(3) All other allocations set forth in the Association's Base Budgets for Phases 1A, 1B, 1C, 2 and 3 shall be apportioned equally among the Residence Lots subject to such Budgets.

(4) Those allocations in that part of the Association's Operating Budgets labeled "Townhomes Cost Center - Phase 1C; Townhomes Cost Center - Phase 2" and "Townhomes Cost Center - Phase 3" shall be used exclusively for the operational costs and reserves applicable to the improvements included in such budget and shall not be comingled with the Base Budgets. The Association shall (a) provide for a separate accounting for funds which are collected and expended under the Townhomes Cost Center - Phase 1C; Townhomes Cost Center - Phase 2" and Townhomes Cost Center - Phase 3 budgets, respectively, and (b) annually review and disclose the reserves applicable to the Townhomes Cost Center - Phase 1C; Townhomes Cost Center - Phase 2" and Townhomes Cost Center - Phase 3 budgets, respectively.

(5) For so long as the two (2) class voting structure is still in effect pursuant to Section 1.28, the affirmative vote or written consent of a majority of each class of memberships shall be required to amend or repeal this Section 6.02(E). Thereafter, this Section 6.02(E) may be amended or repealed by the affirmative vote or written consent of two-thirds (2/3rds) of the Voting Power of the Association.

(F) **Payment.** Unless otherwise determined by the Board, the general assessments shall be collected on a monthly basis, due on the first (1st) of the month to which such assessment pertains.

(G) **First Assessments.** The notice provisions of Section 6.05 below notwithstanding, assessments on all Residence Lots in Phase 1A [except as provided in 6.02(I), below, shall commence on the first (1st) day of the month following the first (1st) conveyance of a Residence Lot under authority of the Public Report for such Phase in an amount per month equal to that set forth in the Public Report until the Board, at any meeting thereafter legally held, shall determine, by resolution, a change in the amount of the assessment and the first date for payment of such changed assessment. Assessments on all Residence Lots in each remaining Phase shall commence after annexation of each such Phase on the first (1st) day of the month following the first (1st) conveyance of a Residence Lot in such Phase under the authority of a Public Report for such Phase. Declarant shall establish a working capital fund for the initial months of the Development's operation equal to two (2) months' general assessments for each Residence Lot in each Phase in the Development. Such contribution shall be paid by Declarant to the Association within sixty (60) days after the close of escrow for the sale of the first (1st) Residence Lot in each such Phase. Each initial Owner shall reimburse Declarant his/her pro rata share of such costs attributable to his/her Residence Lot concurrent with the close of escrow for the purchase of his/her Residence Lot.

(H) **Obligations of Declarant and Members.** Declarant, for each Residence Lot, hereby covenants, and each Member, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay to the Association general assessments and charges and special assessments for purposes permitted herein; and (2) to allow the Association to enforce any Lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. Neither Declarant nor any Member may exempt himself/herself from liability for his/her contributions towards the common expenses of the Association by waiver of the use or enjoyment of any Common Area or Common Facilities, or by the abandonment of his/her Residence Lot.

(I) **Deferral or Exemption from Assessments.**

Common Facility Not Complete: The foregoing notwithstanding any Member (including Declarant) shall be exempt from the payment of that portion of any general or special assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a Common Facility that is not complete at the time the assessments commence. Such exemption shall include the following:

- (1) Roadway, Utility and Drainage Improvements;
- (2) Landscaping, benches, play structures and play area, picnic tables and trash receptacles to be constructed/erected in the common Area.

Any exemption from the payment of assessments attributable to Common Facilities shall be in effect only until the earliest of the following events:

- (3) A notice of completion of the Common Facility has been recorded;
- or
- (4) The Common Facility has been placed into use.

Townhome Residence Not Complete: Furthermore, the foregoing notwithstanding, for any Townhome Residence Lot in a Phase of the Development upon which a residential structure has not been completed as evidenced by the issuance of a certificate of occupancy, the portion of any Assessment to be assessed to such Townhome Residence Lot shall not commence until such time as a certificate of occupancy has been issued for such Townhome Residence Lot.

(J) **Subsidy Agreements; Management Agreements.** The Association may, from time to time, negotiate and enter into Subsidy Agreements, Management Agreements or other arrangements with Declarant pursuant to which Declarant may manage or subsidize all or a portion of the cost of operating and maintaining the Common Areas or Common Facilities and of providing services. Upon the effectiveness of any such Agreement, the Association shall release all that portion of any general assessment which is allocable to the maintenance and operating services to be performed by Declarant on behalf of the Association under such Agreement. Any such Agreement or similar arrangements shall be first reviewed by the California Department of Real Estate.

6.03 Special Assessments. A special assessment is an assessment to reimburse the Association for expenses incurred, or to be incurred, which are not ordinarily included in the annual estimate of expenses referred to in Section 6.02 above. They may be levied as follows:

(A) **Purpose.** The Association shall have the right to impose special assessments for the following purposes:

- (1) To collect such sums due from Members under Sections 4.03 (Utilities), 4.16(A) (Boundary Walls/Fences), 4.16(C)(ii)(dd) (Retaining Walls/Owners Maintain), 6.11 (Taxes), 7.08(B) (Deductibles), 7.10(A)(2) and 7.10(G) (Insufficient Insurance), 7.15(G) (Damage to Common Facilities), 8.02 (Common Area; Common Facilities), 8.03 (Residence; Residence Lots), 12.10 (Mechanics' Liens) and 12.11 (Enforcement) herein;

(2) To defray the cost of any construction or reconstruction undertaking, unexpected repair or replacement of any Common Facilities or any other capital improvement in the Common Area, not covered by the provisions of Article VII below;

(3) To collect a monetary penalty imposed by the Board in accordance with the Bylaws as a disciplinary measure for failure of a Member to comply with the Management Documents;

(4) To reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities caused by a member, his/her guests or tenants;

(5) To defray the cost of any additional improvement in the Common Area or Common Facilities, not in existence on the date of this Declaration, and which Declarant is not otherwise obligated to complete;

(6) To restore funds to the Association's reserve account pursuant to Section 7.05 of the Bylaws; or

(7) To defray the cost for unexpected operating or other costs or for such other purposes as the Board in its discretion considers appropriate.

(B) **Limit.** The Board may not levy special assessments under subsections (A)(2), (A)(5), (A)(6), and (A)(7) above which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written consent of Members constituting a quorum of the Voting Power of the Association casting a majority of the votes pursuant to Civil Code Section 5605(b). For purposes hereof, a quorum shall mean more than fifty percent (50%) of the Voting Power of the Association.

Any vote of the Members as set forth above shall be conducted in accordance with the procedures set forth in Civil Code Section 5100, *et seq.*

Special assessments shall be due on the first day of the month following their levy, unless otherwise determined by the Board.

(C) **Apportionment.** Any special assessment levied pursuant to the provisions of Section 7.10(B) below, shall be levied upon the basis of the ratio of the square footage of the floor area of the Residence located on the Residence Lot to be assessed (see Exhibit "J") to the total square footage of floor area of Residences located on all such Residence Lots to be assessed. Any other special assessment, which is levied against all Residence Lots, shall be apportioned among all the Residence Lots as provided in Section 6.02(E) above.

6.04 Emergency Situations. Despite the provisions of Sections 6.02(D) and 6.03(B) above, the Board may increase or levy general and/or special assessments necessary for emergency situations. For the purposes of this Section 6.04, an emergency situation is any one of the following:

(A) An extraordinary expense required by court order;

(B) An extraordinary expense necessary to repair or maintain the Development, or any part of it for which the Association is responsible, where a threat to safety of persons is discovered; or

(C) Repairs to, or maintenance of, the Development that could not have been reasonably foreseen in preparing the budget. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

6.05 Notice of Assessments; Increase in Assessments.

(A) Notice of the amount of any general or special assessment imposed by the Association shall be provided to each Member by individual delivery not less than thirty (30) days prior to the date the assessment or charge becomes due and payable.

(B) The Association shall provide notice by individual delivery to each Member of any increase in the general or special assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

6.06 Default; Late Charge; Interest. Fifteen (15) days after any general or special assessment is due and payable by a Member, but remains unpaid or not otherwise satisfied, it shall be and become delinquent and shall so continue until the amount of the assessment, together with all costs, late charges and interest as herein provided, has been fully paid or otherwise satisfied. The Board may establish a reasonable charge for late payment of any assessment to defray the additional administration costs a late payment may cause, subject to the limitations as set forth in Civil Code Section 5650, which currently provides that a late charge shall not exceed ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater. Such late charges may be imposed at any time after any assessment has become delinquent. Interest shall accrue at the rate of twelve percent (12%) per annum upon all unpaid assessments commencing thirty (30) days after the assessment becomes due.

6.07 Pre-Lien Notice; Payment Plan; Dispute Resolution. At any time after any general or special assessment against a Residence Lot has become delinquent, the Association may record a lien for delinquent assessments (a "Lien") as to such Residence Lot; provided, however, that at least thirty (30) days before recording the Lien, the Association shall have provided the Owner of such Residence Lot, in writing, by certified mail, all of the information required pursuant to California Civil Code Section 5660 (a "Pre-Lien Notice"). Pursuant to Civil Code Section 5665, a Member may submit a written request to meet with the Board to discuss a payment plan for the delinquency. The Association shall provide Members with the standards for payment plans, if any exist. If so requested by the Member, the Board shall meet with the Member in executive session within forty-five (45) days of the date of the postmark of the Member's notice. If there is no regularly scheduled Board meeting within that period, the Board may designate a committee of one or more members to meet with the Member. Prior to recording a lien for delinquent assessments, the Association shall offer the Member and, if so requested by the Member, to participate in dispute resolution in the manner set forth in Civil Code Section 5670.

The foregoing notwithstanding, a monetary penalty imposed by the Association pursuant to Section 6.03(A)(3), except for the late payments, may not be characterized nor treated in the Management Documents as an assessment that may become a Lien against the Member's Residence Lot enforceable by the sale of the interest under Civil Code Sections 2924, 2924(b), and 2924(c).

6.08 Lien for Delinquent Assessments. Except as otherwise provided in Section 6.07 above, on or after thirty (30) days from the delivery of the Pre-Lien Notice, as described in Section 6.07 above, the Association may record a Lien as to such Residence Lot.

(A) Immediately upon the recording of a Lien, the amount of the delinquent assessments, plus any costs of collection, late charges, and interest assessed in accordance with California Civil Code Section 5650, shall become a Lien on the Member's Residence Lot, which Lien shall continue until the amount of such delinquency and the interest, costs and late charges accrued thereon have been fully paid or otherwise satisfied or the Lien foreclosed as provided therein.. The recorded Lien shall include all information required pursuant to California Civil Code Section 5675.

(B) Such Lien shall be signed by an Officer and a copy thereof shall be mailed, by certified mail, to every person whose name is shown as an Owner of the Residence Lot no later than ten (10) calendar days after recordation. The decision to record a Lien shall be made only by

the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an open meeting of the Board. The Board shall record the vote in the minutes of that meeting.

(C) In addition to the requirements of this Section 6.08, notice of a recorded Lien shall be served by the Association on the Owner's legal representative, if any, in accordance with the manner of service of summons described in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure.

(D) Upon receipt of a written request by a Member identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section 6.08 to the secondary address provided. The Association shall notify Members of their right to submit secondary addresses to the Association at the time the association issues the pro forma operating budget pursuant to California Civil Code Section 5300. A Member's request identifying a secondary address for purposes of collection notices shall be in writing and shall be mailed to the Association in a manner provided in Civil Code Section 4035 (See Exhibit "B"). The Member may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(E) Any payments received shall first be applied to the assessments owing, and then to the fees and costs of collection, attorneys' fees, late charges and interest. When a Member makes a payment, he/she may request a receipt, and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it.

(F) Within twenty-one (21) days of the payment of the sums specified in a recorded Lien, or upon other satisfaction thereof, the Association shall record, or cause to be recorded, a Lien release or notice of rescission and provide the Member with a copy of the Lien release or notice that the delinquent assessment has been satisfied.

(G) If it is determined that a Lien previously recorded against the Residence Lot was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Owner of the Residence Lot with a declaration that the Lien filing or recording was in error and a copy of the lien release or notice of rescission.

If it is determined that the Association has recorded a Lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in Civil Code Section 5660, and costs of recordation and release of the Lien authorized under subdivision (b) of Civil Code Section 5720, and pay all costs related to any related dispute resolution or alternative dispute resolution.

If the Association fails to comply with the procedures set forth in this Article, the Association shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Member.

6.09 Enforcement of Lien; Attorneys' Fees.

(A) Except as otherwise provided in subsection (C) below or Civil Code Section 5700, each Lien created pursuant to the provisions of this Declaration may be enforced in any manner permitted by law, including sale by the court, the Association, the trustee or other person authorized to make the sale after the expiration of thirty (30) days following recording of the Lien; provided, however, that, pursuant to Civil Code Section 5720, a Lien in an amount less than One Thousand, Eight Hundred Dollars (\$1,800.00), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not be enforced through judicial or nonjudicial foreclosure until: (i) the amount of the delinquent assessments secured by

the Lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds One Thousand, Eight Hundred Dollars (\$1,800.00); or (ii) the assessments secured by the Lien are more than twelve (12) months delinquent.

(B) The decision to initiate foreclosure of a Lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to any agent of the Association. The Board shall approve the decision by a majority vote of the Directors in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner of the Residence Lot subject to foreclosure by identifying the matter in the minutes by the parcel number of the Residence Lot, rather than the name of the Owner. A Board vote to approve foreclosure of a Lien shall take place at least thirty (30) days prior to any public sale. The Association shall notify the Member by personal service if the Board votes to foreclose on the Residence Lot in the manner set forth in Civil Code Section 5705(d).

(C) Prior to initiating foreclosure of a Lien the Association shall offer the Member and, if so requested by the Member, participate in dispute resolution procedures as described in Section 5705(b) of the Civil Code.

(D) The sale of a Residence Lot pursuant to this Section 6.09 may be conducted in accordance with the provisions of Sections 2924, 2924(b), 2924(c) and 2934(a) of the California Civil Code, or in any other manner permitted by law. The Association may bring separate legal action to collect delinquent assessments without foreclosing such Lien. In any action to collect delinquent assessments or to foreclose any Lien, the Association shall be entitled to costs, including reasonable attorneys' fees as determined by a court of competent jurisdiction, interest, and such late charges for delinquent assessments as shall have been established by the Board. The personal obligation for delinquent assessments shall not pass to a Member's successor in title unless expressly assumed by him/her.

(E) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption pursuant to California Civil Code Section 5715(b). The redemption period within which a Residence Lot may be redeemed from a foreclosure sale by the Member will end ninety (90) days after the sale.

(F) To facilitate collection of assessments, fees and charges, the Association may record a statement of relevant information pursuant to Civil Code Section 4210.

6.10 Priority of Assessment Lien; Subordination. Sale or transfer of any Residence Lot shall not affect the assessment Lien. However, the Lien of the assessments provided for herein, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any recorded First Mortgage upon the Residence Lot. Accordingly, the sale or transfer of any Residence Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, a First Mortgagee who obtains title to a Residence Lot pursuant to a judicial or nonjudicial foreclosure shall be liable for up to six (6) months of the Residence Lot's share of the unpaid, regularly budgeted common expenses or assessments by the Association chargeable to such Residence Lot which became due prior to the acquisition of title to such Residence Lot by such First Mortgagee as provided in Section 14.06(B) below. If the Association's lien priority includes costs of collecting the unpaid assessments, the Mortgagee will also be liable for any fees or costs related to the collection of unpaid assessments. No sale or transfer shall relieve such Residence Lot from liens for any assessments thereafter becoming due.

6.11 Payment of Taxes. The Association shall have the right, to the extent not paid by the Members, to pay all real property taxes and assessments levied upon any part or portion of the Development by a duly authorized governmental or quasi-governmental authority. The Association shall have the right to impose a special assessment and Lien against such portion of the Development for the amount paid by the Association pursuant to the right given by this Section

6.11. Such assessment and Lien imposed by the Association shall be enforced as provided in this Article VI.

6.12 Statutory Compliance. It is the intent of Declarant that the above provisions relating to prior notice, recordation and foreclosure of Liens against Residence Lots in the Development be in compliance with applicable provisions and requirements of the Davis-Stirling Common Interest Development Act and other applicable statutes and regulations of the State of California. However, such statutory requirements are subject to change, and the Board and Members should regularly refer to such authorities (in particular Chapter 8 of Part 5 of Division 4 of the California Civil Code, commencing with Section 5600) when providing Pre-Lien Notices, and when recording or foreclosing Liens on any Residence Lot in connection with such delinquent assessments, in order to ensure that all such notices, recorded Liens and procedures relating to such Liens are in full compliance with applicable law.

6.13 Alternate Legal Action; Settlement. Nothing in this Article VI shall prohibit the Association from pursuing available legal remedies against any Member to recover sums specified in a Pre-Lien Notice or sums for which a Lien is created, or from taking a deed in lieu of foreclosure.

6.14 Rental Program; Reserves for Replacement. If any Residence or Residence Lot in any subsequent Phase of the Development has been used or occupied under a rental program conducted by Declarant, which has been in effect for a period of at least one (1) year as of the date of closing the escrow for the first (1st) sale of a Residence Lot in the annexed Phase, then Declarant shall pay to the Association an appropriate amount for reserves for replacement or deferred maintenance of Common Area and/or Common Facility improvements in the annexed Phase necessitated by or arising out of such use or occupancy. For purposes hereof, the "appropriate amount for reserves for replacement," as stated herein, shall be as set forth in the monthly budget per Residence Lot under reserves for such Phase as reviewed by the California Department of Real Estate pursuant to its Public Report for such Phase, multiplied by the number of months such Residence(s) or Residence Lot(s) were used or occupied under such rental program.

ARTICLE VII

Insurance; Destruction of Improvements

7.01 General Insurance Requirements. All insurance policies that the Association purchases shall be maintained in force at all times and the Association shall pay the premiums out of the general assessment fund. Except as otherwise determined by the Board, the insurance policies written by an insurer admitted or non-admitted in the State of California must have a policyholder's rating of A-IX or better in the most recently published A.M. Best's Rating Guide. The policy or policies shall name the Association as the first named insured and have a cancellation provision requiring the insurer to notify the Association at least thirty (30) days in advance of any policy cancellation for any reason except at least a ten (10)-day written notification for nonpayment of premium. Unless otherwise determined by the Board, all insurance forms and policies refer to Insurance Services Office (ISO) forms and policies or equivalent.

7.02 Liability Insurance. Commercial general liability insurance shall be purchased by the Association as promptly as possibly following the Organizational Meeting of Members pursuant to Section 4.02 of the Bylaws. Until then, such insurance shall be procured by Declarant. The policy or policies shall name the Association as the insured. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant conveys all of the Residence Lots in the Development. The policy or policies shall: (A) insure against any liability incidental to the ownership and/or use of the Common Area and Common Facilities; (B) include contractual exposures of the Association and Board such as but not limited to those easements over the Residence Lots as set forth in Sections 4.03 and 4.16 and the Revocable License referred to in Section 4.17; (C) insure against any liability incidental to the obligation of the Association set forth in Section 8.05; and (D) include "severability of interest" in its terms (or a specific endorsement to preclude the insurer's denial of the claim of any Member because of negligent acts of the Association or of any other Member). The limits of commercial general liability and property

damage insurance required by this Section 7.02 shall be as determined by the Board, but shall be not less than Two Million dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence, or such higher amount as may be required under Civil Code Section 5805 to protect the Association and Members against certain claims of civil liability. Unless otherwise determined by the Board, such insurance shall be on an occurrence basis and include a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

7.03 Excess or Umbrella Liability. The Association may purchase an Excess or Umbrella policy, to satisfy the above general and automobile liability limits or provide for higher liability limits as the Board shall determine

7.04 Directors and Officers Liability Insurance. The Association shall purchase Directors and Officers liability insurance in an amount determined by the Board but not less than Five Hundred Thousand Dollars (\$500,000.00) or such higher amount as may be required under Civil Code Section 5800, or as otherwise determined by the Board.

7.05 Workers Compensation. The Association shall purchase Workers' Compensation insurance to the extent required by law respecting employees of the Association.

7.06 Property Insurance.

(A) Townhome Residence Lots 7-47; 78-87; Common Area.

(1) The Association shall purchase a property policy or policies of insurance that covers all improvements in the Common Area and on Townhome Residence Lots 7-47 and 78-87, at such time as such Common Area and Townhome Residence Lots are annexed into the Development as part of Phase 1A, Phase 1C or Phase 2 as the case may be, or are otherwise included in Phase 1A as described in Exhibit "A" but excluding underground utilities, as promptly as possible following the Organizational Meeting of Members pursuant to Section 4.02 of the Bylaws. Until then, such insurance shall be procured by Declarant. Such improvements shall include, among other things, exterior and interior walls and doors, roofs, ceilings, floors, foundations, footings, and surface materials (e.g. paint, wallpaper, carpets, tile and hardwood floors), utility fixtures (including electric and plumbing), built-in cabinets, appliances (such as those used for refrigeration, ventilating, cooking, dishwashing, laundering, security, or housekeeping), heating systems, water heaters, and fixtures, **but shall not include any improvements, alterations or upgrades to any of the foregoing, or to the building or structure to the extent of any such improvements, alterations, or upgrades.** The policy or policies shall also cover business/personal property owned in common by the Association, but excluding any personal property located in the Townhome Residence. Unless otherwise determined by the Board, such property must be insured for Special Causes of Loss Form, and the per occurrence blanket policy amount shall be an amount equal to one hundred percent (100%) of the full replacement cost of the improvements and personal property at the time of loss. The policy will also include the following coverages: (1) Ordinance and Law Coverage; (2) Replacement Cost of the improvements; (3) Demolition Cost; (4) Increased Cost of Construction with a minimum limit of \$5,000 per occurrence; (5) an Agreed Amount endorsement which waives any coinsurance clause contained in the policy; (6) if available, an Inflation Guard endorsement; (7) a Deductible endorsement with the amount of such deductible to be determined by the Board; and (8) Waiver of Subrogation Rights against any insured. The Association will be a named insured as its interest may appear, with a waiver of subrogation clause. The policy or policies shall provide for the issuance of certificates or such endorsements evidencing the insurance as may be required by the respective Mortgagees. Declarant shall be named as an additional insured on such policy or policies until such time as Declarant conveys all of the Townhome Residence Lots in the Development.

(2) An Owner of a Townhome Residence Lot may have other insurance covering the same property as purchased by the Association, but the Association's policy is intended to be primary and not contributory with such other insurance. Any diminution in

insurance proceeds from the Association's policy resulting from the existence of such other insurance or failure to have the proceeds resulting from the existence of such other insurance payable pursuant to the provisions of Section 7.10 below shall be chargeable to the Owner who acquired such other insurance, and who shall be liable to the Association to the extent of any such diminution or loss of such proceeds.

(B) Residence Lots 1-6; 48-77.

(1) Residence Lots 1-6; 48; 59-60; 69. Each Owner of Residence Lots 1-6 and 48-77 shall purchase a property policy or policies that cover all improvements on his/her Lot, personal property, and any upgrades located within the Owner's Lot and said policy shall also include an endorsement for "replacement cost" and with a reasonable deductible. **The Association's insurance policies will not provide coverage for losses to the Owner's real and personal property or for any upgrades or additions to any fixtures or improvements located within the Residence or Lot.** In addition, each Owner shall maintain a general liability insurance policy in an amount not less than \$500,000 covering any liability for injury to any person or damage to any improvements or personal property within the Lot caused by any act or omission of the Owner or tenant of the Owner's Residence Lot, or their family members, employees, agents or invitees. Each Owner also is advised to procure loss assessment coverage in such amounts as may be recommended by a qualified consultant. Nothing herein imposes any duty on the Association, its Directors, officers or agents (including any manager) to confirm or otherwise verify that the Owners are carrying such insurance. Further, no loss may be claimed against the Association's policies or the Association itself if such loss would have been covered by the above-mentioned Owner's policy(ies) had one been purchased. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other Owners, the Association, Declarant and the mortgagees of such Lot.

(2) Residence Lots 49-58; 61-68; 70-77. Residences located on Residence Lots 49-58; 61-68; and 70-77 are duplex structures. Accordingly, in addition to the requirements set forth in Section 7.06(B)(1) above and as provided in **Exhibit "F"** attached hereto, a certificate of insurance evidencing the insurance policy with the endorsement required in subsection 7.06(B)(1), shall be delivered by each Owner to the Owner of the adjoining Residence on an annual basis. Each Owner shall provide to the Owner of the adjoining Residence written notice of cancellation or reduction of coverage amount of the insurance policy required pursuant to this subsection, not less than thirty (30) days prior to the effective date of cancellation or reduction of coverage amount of the policy.

(C) Each Member is strongly advised to seek the advice of a qualified insurance consultant regarding the Member's property and liability insurance obligations under this Section 7.06 and regarding loss assessment and Lot Owner's building insurance coverage. In addition, Members, particularly subsequent Members, should determine whether any upgrades or additions to the Residence or Lot have been made after the initial occupancy of the Lot to determine whether the Member should acquire additional insurance coverage.

7.07 Member's Liability, Upgrades and Contents Insurance. In addition to the Common Area liability insurance covered under Section 7.02 above, the Owners of Residence Lots 7-47 and 78-87 may carry such personal liability insurance as the Member may desire. Further, any improvements, alterations or upgrades made by a Member to those improvements within a Residence or Residence Lot insured under Section 7.06 above, as well as any personal property of a Member, may be separately insured by such Member. All such property insurance separately purchased by a Member shall contain a waiver of subrogation rights by the carrier as to negligent acts of the Association or Members. **The Association shall have no responsibility whatsoever to secure any insurance for any improvements, alterations or upgrades made within any residence or Residence Lot, for any personal property of any Member, wherever located.** Further, neither the Association nor the Board shall have any responsibility whatsoever to verify that Members have obtained such insurance or to enforce provisions of this section.

7.08 Other Insurance Coverage; Deductibles; Subrogation; Liability.

(A) **Other Insurance Coverage.** The Association may purchase and maintain in force earthquake, flood and/or tsunami insurance, and other insurance or bonds that are necessary or appropriate in the discretion of the Association; provided, however, that unless otherwise determined to the contrary by sixty-seven percent (67%) of the Voting Power of the Association, the Association shall have no responsibility to obtain earthquake insurance or flood insurance covering improvements in the Residence Lots. The Association shall purchase fidelity bonds or insurance as provided in Section 14.02(B) below. Any and all policies purchased by the Association may be combined into one or more blanket or consolidated policies at the Association's discretion.

(B) **Deductibles.** The Board shall determine the amount of deductibles on any policy of insurance maintained by the Association and adopt rules and regulations regarding payment of deductibles. Unless the Board determines otherwise, Members responsible for the payment of any deductibles shall pay the amount of the deductible up to an amount not to exceed Five Thousand Dollars (\$5,000.00) (adjusted annually for inflation). To illustrate the foregoing, a Member whose Residence is damaged by a peril covered under Section 7.06(A) shall pay his/her portion of the deductible as required by this subsection (B) or as determined by the Board. If two (2) or more Residences are damaged by such insured peril, the deductible shall be prorated equally among the damaged Residences, and the Owners of such Residences shall pay their respective share of the deductible. The Association shall pay from Association funds (i) the balance of any deductible for which a Member is responsible that exceeds Five Thousand Dollars (\$5,000.00) (as adjusted for inflation), and (ii) all deductibles under any insurance claim not otherwise the responsibility of a Member. If insufficient funds are available from the Association's funds or from funds borrowed by the Association in accordance with the Management Documents, the Association shall levy a Special Assessment, in accordance with Section 6.03(A)(1) of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

(C) **Waiver of Subrogation.** Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its Officers, Directors and Owners and occupants of the Residence Lots and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

(D) **Liability.** Neither the Association, the Board, nor any managing agent shall be liable for failure to obtain any coverages required by this Article VII, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages, in the judgment of the Board, are available but only at unreasonable cost.

7.09 Board Appointed Attorney-in-Fact. The Board is hereby appointed attorney-in-fact for all Members to negotiate loss adjustments on the policies carried under Sections 7.02, 7.07 and 7.08 above, with the exception of the Secretary, United States Department of Veterans Affairs, an Officer of the United States of America.

7.10 Damage or Destruction

(A) Townhome Lots 7-47;78-87

(1) **Segregation of Funds; Obligation to Rebuild.** If any Townhome Residence or other improvements insured under Sections 7.06(A) or 7.08(A) above is damaged or destroyed by a peril covered by the Association's property insurance policy as provided in Sections 7.06(A) or 7.08(A), all insurance proceeds paid in satisfaction of claims for such losses shall be paid to the Association as trustee for the Owners of such Lots and for the encumbrancers as their interests may appear. The Owners shall be responsible for the costs of repair or reconstruction that is not covered by the Association's insurance policies or is within the deductible amount. The insurance proceeds and the proceeds of any special assessments as hereinafter provided, whether

or not subject to liens of Mortgages or deeds of trust, shall be collected and disbursed by the Association through a separate trust account pursuant to the provisions of subsection (3) below. Subject to the provisions of subsections (D) and (E) below, and on behalf of the affected Owner(s), the Board, acting through a hired construction consultant, public adjuster or third party administrator, shall (a) obtain bids from one or more reputable contractors licensed in the State of California, whose bids shall set forth in detail the work required to repair, reconstruct or restore the damaged Residence(s) to substantially the same condition as it/they existed prior to being damaged (modified as may be required by applicable building codes), and (b) determine the amount of all insurance proceeds available to the Association to effect such repair, reconstruction or restoration. Thereupon, the Association may contract immediately to repair or rebuild the damaged portion of such Residence(s); provided, however, that before commencement of any demolition or construction, the Association shall procure, and shall maintain in force until completion and acceptance of the work, a Special All Risk Builder's Risk insurance policy insuring the replaced improvements under contract, including soft costs but excluding contractor's, subcontractor's and construction manager's tools and equipment, and property owned by contractor's or subcontractor's employees, with property limits in an amount at least equal to the estimated cost of construction including soft costs for all work at the job site, and if required in the contract, in transit or materials while being fabricated at an offsite location.

(2) **Special Assessments.** If any insured loss to a Residence or other improvements insured under Sections 7.06(A) or 7.08(A) above is repaired or reconstructed pursuant to the provisions of this Section 7.10, and there are insufficient funds from the insurance proceeds paid for such damage and the agreed, signed contract price for repairing or rebuilding such improvements, the Board shall levy a special assessment against all Owners of Residence Lots 7-47 and 78-87 that have been annexed into the Development or are otherwise located in Phase 1a apportioned as provided in Section 6.03(C) above. If any Owner fails to pay said special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the general assessment fund, and the Association shall have the same remedies as those provided in Article VI above covering a default of any Owner in the payment of assessments.

(3) **Disbursement Procedure.** If the estimated cost of repair or reconstruction of any Residence or other improvement insured under Sections 7.06(A) or 7.08(A) exceeds the sum of Ten Thousand Dollars (\$10,000.00), whether or not all or any part of the cost is covered by the insurance proceeds, the monies deposited in the special trust account referred to above shall be disbursed for the purpose of the repair or reconstruction on the following terms and conditions:

(a) The Board shall obtain the consent and agreement of a majority of the affected First Mortgagees to supervise the progress of repair or reconstruction work and the disbursement of funds in connection therewith.

(b) Thereafter, all insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository") as selected by the Board and a majority of First Mortgagees. Funds shall be disbursed in accordance with the normal construction loan practices of the Depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(i) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(ii) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services

or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those persons in respect of such services and stating the progress of the work up to the date of such certificate;

(iii) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(iv) that no part of the cost of the services and materials described in the foregoing sub-paragraph (b) above has been or is being made the basis for the disbursement of any funds in any previous or then pending application;

(v) that the amount held by the Depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction; and,

(vi) that mechanics' lien releases have been obtained from those eligible to file lien claims.

(c) If for any reason no such commercial lending institution is willing to act as the Depository, the Association may act as such and shall follow the provisions of subsections (a)-(f) above as are reasonably practicable.

(4) No disbursement for the work shall be made without the prior approval of a majority of First Mortgagees, unless pursuant to the provisions set forth above.

(B) **Residence Lots 1-6;48;59-60;69.** As provided in Section 7.06(B)(1), each Owner of a Residence Lot shall among other things purchase a property policy or policies that cover all improvements on his/her Lot, including an endorsement for "replacement costs" with a reasonable deductible. Pursuant to Section 8.03(A), such Owner s shall among other things repair and reconstruct the structural improvements and landscaping on their Lot within the time frames set forth in said Section 8.03(A).

(C) **Residence Lots 49-58; 61-68; 70-77.** Pursuant to Section 7.06(B)(2), these duplex Lots are subject to the same requirements as Residence Lots 1-6; 48; 59-60; and 69 set forth in paragraph (B) above but also must comply with the provisions set forth in **Exhibit "F"** attached hereto.

(D) **Election Not to Rebuild.** It is the general intent of subsections (A),(B) and (C) above to assure the repair or reconstruction of any Residence or other improvement located in the Development irrespective of the cause of the damage or destruction, or of the adequacy of any insurance proceeds. The Members may, however, upon the vote or written consent of two-thirds (2/3rds) or more of the Voting Power of the Association and those First Mortgagees required pursuant to Section 14.06(E) below, elect not to repair or rebuild such improvements, provided that, in such event, the Board shall have prepared and filed, as promptly as practicable, a map reverting the Real Property to acreage (converting the Development into an unimproved parcel of land), and the entire Development shall be offered for sale forthwith at the highest and best price obtainable, either in its damaged condition, or after all structures have been razed. The net proceeds of such sale shall be distributed among the Members and their respective Mortgagees as their interests appear according to the proportionate fair market value of the respective Residences immediately preceding the destruction, as determined by independent appraisal pursuant to subsection (H) below. The net proceeds of any insurance paid to the Association for Residence Lots 7-47; 78-87 shall be distributed among the Owners of such Lots and their respective Mortgagees as their interests appear according to the proportionate fair market value of the respective Residences immediately preceding the damage or destruction, as determined by independent appraisal pursuant to subsection (H) below. The net proceeds of any insurance paid to an Owner of Lots 1-6; 48-77 under his/her separate insurance policy(ies) shall be retained by the Owner. For purposes of effecting such sale, each Member grants to the Association an

irrevocable power of attorney to sell the entire Development for the benefit of the Members, to terminate these Declarations, and to dissolve the Association.

(E) **Inability to Rebuild.** If the damage or destruction occurs to all or a portion of any of the Residences, and there exists an impossibility or inability to repair or reconstruct all of the damaged Residences for reasons beyond the control of the Members, including, but not limited to, zoning restrictions which have been enacted, or geological hazards which have developed or been discovered, since the date of this Declaration, and the Members do not make the election under subsection (D) above, the following shall occur:

(1) Residence Lots 7-47; 78-87.

(i) The insurance proceeds payable on account of the Residence Lots that cannot be rebuilt shall be disbursed by the Association, first to pay the cost of removing any remaining or destroyed portions of the improvements and complying with all other applicable requirements of governmental agencies, and then unless otherwise provided by law, to or for the benefit of the Owners of the Residence Lots that cannot be rebuilt in proportion to the actual cash value of their Residences immediately preceding the destruction as determined under the Association's insurance policy statement of values and other pertinent documentation/information. Any other funds received by the Association with respect to the Residence Lots that cannot be rebuilt, such as condemnation proceeds, shall also be disbursed to or for the benefit of the Owners in the manner set forth above. All payments to be made hereunder, to or for the benefit of an Owner of a Residence Lot that cannot be rebuilt, shall be paid first to reduce or eliminate the lien of any mortgage, deed of trust or other encumbrance on such Residence Lot, and only the balance, if any, after satisfaction of such lien, shall be paid directly to each Owner.

(ii) Concurrently, the fair market value of the Residence Lots that cannot be rebuilt, reflecting the impossibility or inability to rebuild such Residence Lots, shall be determined by independent appraisal pursuant to subsection (H) below ("adjusted fair market value").

(iii) The Association shall pay to the affected Owner(s) of such Residence Lots the adjusted fair market value of the Residence Lots determined in the manner above set forth. The obligation to pay the adjusted fair market value of the Residence Lots shall be apportioned equally among the remaining Residence Lots. The Association, at its option, may either (a) levy a special assessment against the remaining Residence Lots to collect the sums owing to the Owner(s) of the Residence Lots that cannot be rebuilt, or (b) issue a promissory note to the Owner(s) of the Residence Lots that cannot be rebuilt. Such promissory note shall bear interest at the minimum rate permitted by law and be fully amortized for a term not to exceed three (3) years. The Board shall collect the funds to repay such promissory notes through one or more special assessments against the remaining Residence Lots.

(iv) Upon receipt of their respective share of insurance proceeds, as provided in subsection (1) above, each of the Owners of Residence Lot that cannot be rebuilt shall convey his/her Residence Lot, and any interest in the Common Area and Common Facilities to the Association as trustee for the Owners of the remaining Residence Lots and execute such other documents necessary to terminate his/her interest in the Development, including any right he/she may have had to rebuild after damage or destruction.

(v) All such deeds conveying Residence Lots and interests in the Common Area shall be recorded, with the result, among other things, that one hundred percent (100%) (a) of the Common Area, and (b) of the Residence Lots that cannot be rebuilt shall be owned by the Association and the remaining Owners, or some combination thereof, as the case may be.

(2) Residence Lots 1-6; 48-77.

(i) The net proceeds of any insurance paid to the Owners of any such Lot that cannot be rebuilt under his/her insurance policy(ies), shall be retained by the Owners of such

Lot. Condemnation awards shall be distributed pursuant to Article IX or Section 14.03 as the case may be.

(F) **Amendment.** Subsections (A) – (E) above and this subsection (F) may be amended only by an instrument in writing, executed and acknowledged in the manner provided in Section 13.02 and those First Mortgagees referenced in Section 14.06(D) below, and recorded in the Office of the County Recorder. Such percentages shall include the Owners whose Residence Lots cannot be rebuilt, if any, or whose Residence Lots have suffered damage or destruction, and which have not, at the time of such amendment, been fully repaired or reconstructed.

(G) **Damage to Common Facilities.** Upon damage to, or destruction by fire or other casualty, of all or any portion of a Common Facility, all insurance proceeds paid in satisfaction for claims of said loss and the proceeds of any special assessment as hereinafter provided shall be used by the Board to repair or rebuild the damaged portion of such Common Facility substantially in accordance with the original plans and specifications thereof. However, within ninety (90) days from the date of such destruction, not less than two-thirds (2/3) of the Voting Power of the Association and those First Mortgagees referenced in Section 14.06(D) below may determine that such reconstruction shall not take place or that such Common Facility be reconstructed in a manner differing from the original plans and specifications. If there is any deficiency between the insurance proceeds paid for the damage to the Common Facility and the contract price for repairing or rebuilding such Common Facility, the Board shall levy a special assessment against each Owner as provided in Section 6.03(A) above. If all or any portion of the insurance proceeds are not devoted to the repair or rebuilding of the Common Facility, the unspent balance shall be distributed among the Members and their respective mortgagees as their interests appear according to the proportionate fair market value of the respective Residences at the time of the destruction as determined by independent appraisal.

(H) **Appraisal.** Wherever the adjusted fair market value or fair market value of all or any part of the Development is to be independently appraised under this Section 7.10, such appraisal shall be made by a licensed member of the Appraisal Institute (“MAI”) appraiser, as chosen by a majority of the Board, or, lacking such a majority, as chosen by a majority of the Voting Power of the Association.

7.16 Review of Insurance Coverage and Broker Services. The Board periodically (and not less than once every three (3) years) shall review the Association’s agent or broker and the Association’s insurance policies. The Board shall make changes of their Agent or Broker and/or adjustments to such policies, and the terms and conditions thereof, as the Board considers, in its discretion, to be in the best interest of the Association. Such periodic review of the Association’s insurance policies shall include an appraisal, by a qualified appraiser, of the current replacement costs of all insured property, unless the Board, in its discretion, is satisfied that the current dollar limit of the policies, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs of the insured property.

7.17 Dispute Resolution. If a dispute arises among any Member and the Association respecting the provisions of this Article VII, the resolution of such dispute shall proceed in accordance with Section 10.05 below.

ARTICLE VIII
Maintenance, Replacement and Improvement

8.01 *Common Area; Common Facilities.*

(A) Except as may otherwise be provided in Sections 4.03, 4.05, 4.07, and 8.03 all Common Area shall be conveyed to the Association by Declarant, and all such Common Area and Common Facilities, including, but not limited to, exterior fences and walls, driveways, private streets, private walkways and sidewalks, including street trees, shall be maintained, repaired, operated, cared for and managed exclusively by the Association, for the benefit and use of the Members, as provided herein, in good condition and state of maintenance and repair, as a common expense of the Association.

The Association shall not be liable for damage to any Residence or Residence Lot (nor any personal or structural property located therein) caused by any damaged or defective Common Facility or any damaged or defective Utility Line or Common Line, referred to in Section 4.03 above, unless such damage is caused by the recklessness of the Association or the Board, Officers, employees or agents of the Association. To illustrate the foregoing, the Association shall not be liable for damage to any Residence or Residence Lot (nor any personal or structural property located therein) resulting from water which may leak or flow from outside the Residence Lot, or from any roadway, pipes, drains, conduits, appliances or equipment, or from any other place or cause, unless caused by the recklessness of the Association, the Board, officers, employees or agents of the Association.

(B) The Association shall pay the cost for the repair and maintenance of any Common Facilities and those Townhome Residences located on Lots 7-47, 55-58 and 78-87, pursuant to and to the extent provided in Section 8.03(C), subject to Section 6.02(I), at such time as such Common Facilities and Residence Lots are annexed into the Development as part of Phase 1A, 1C or Phase 2 or are otherwise included in Phase 1A as described in Exhibit "A", that are damaged by the presence of wood-destroying pests or organisms and may cause the temporary removal of any Member or occupant from the Development for such periods and at such times necessary for the prompt, effective treatment of wood-destroying pests or organisms. If the Association deems it necessary to temporarily remove any Member or occupant from the Development, the Association shall give written notice to such Member or occupant not less than fifteen (15) days, nor more than thirty (30) days, prior to the date of removal in the manner prescribed in Section 4785 of the California Civil Code, as amended. The cost of temporary relocation shall be borne by such Member or occupant, and not by the Association.

8.02 *Damage to Common Area or Common Facility.*

If any Common Area or Common Facility is damaged or destroyed through the act or omission of any Member or his/her guests, members of his/her family, agents, or employees, whether or not such act or omission is negligent or otherwise culpable, the Association shall forthwith proceed to rebuild, repair, or replace it to as good a condition as formerly existed, and the costs thereof shall be reimbursed to the Association by the Member. However, if the repair is covered by insurance carried by the Association, the Association shall make the repair, and the Member shall pay any deductible under the insurance policy in the manner set forth in Section 7.08(B). If such responsible Member fails to pay the deductible in a timely manner, the Association shall have the right to do so.

If the Association undertakes the rebuilding, repair, maintenance, or replacement of any Common Area or Common Facility, including the payment of any deductible for which a Member is liable hereunder, the Association may recover the cost thereof through a special assessment against the Residence Lot of the Member pursuant to Section 6.03(A)(1) above.

8.03 Residences; Detached Residence Lots.

(A) Detached Residence Lots 1-6; 48; 59-60; 69.

(1) Except for the Common Area, Common Facilities and easement areas to be maintained by the Association pursuant to Section 8.01 and Article IV, each Owner of a Detached Residence Lot described above as Residence Lots 1-6; 48; 59-60; 69, as detached residences shall, at his/her sole cost and expense, maintain and repair his/her Residence Lot and all structural improvements and landscaping, keeping the same in good condition. In addition, each Owner shall have the structural improvements on his/her Lot periodically inspected for termites, and if warranted, immediately shall take appropriate corrective measures therefor.

If any structural improvements or landscaping on a Detached Residence Lot are damaged or destroyed by fire or other casualty, the Owner of the Lot shall at his/her sole cost and expense (1) immediately take such steps as reasonably may be required to secure any hazardous conditions resulting from the damage or destruction and (2) repair and reconstruct the structural improvements and landscaping in accordance with the original as-built plans and specifications (as may have been modified pursuant to Article XII), modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Board.

Unless otherwise extended in writing by the Board, the repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one (1) year after such date.

Declarant shall furnish each initial Owner of a Residence Lot with an owner's maintenance manual which shall include a schedule of the reasonable works of maintenance that must be performed by him/her in connection with the maintenance of his/her Residence or Residence Lot. The failure of any Owner to follow this maintenance schedule as well as commonly accepted maintenance obligations may be a defense to any allegation of potential liability on the part of Declarant for alleged defects in the construction or design of such Owner's Residence Lot. The Owners are instructed to deliver a copy of the maintenance manual to the subsequent purchasers of their respective Residence Lots.

(2) If an Owner of any Residence Lot fails to maintain, repair or reconstruct the landscaping or structural improvements on his/her Lot as set forth above, the Association may enter onto the Lot and perform the necessary maintenance, repairs or reconstruction.

If the Association undertakes the rebuilding, repair, maintenance, or replacement of any structural improvements or landscaping on a Residence Lot for which an Owner is liable hereunder, the Association may recover the cost thereof through a special assessment against the Owner pursuant to Section 6.03(A)(1).

(B) Duplex Lots 49-54; 61-68; 70-77.

The Residences located on Residence Lots 49-54; 61-68; 70-77 are duplex structures attached one to the other and have "common roof systems," "common foundation systems" and "party walls" (herein, "Common Structure" or "Common Structures"). For purposes hereof, a "party wall" is a wall between Residences (as may later be modified pursuant to Article XII), and a common roof is a roof which is built as a continuous structure in the original construction of the two adjoining Residences (as may later be modified pursuant to Article XII) when the portion of the roof covering each Residence is joined with that portion covering the other Residence. A common foundation is a foundation which is built as a continuous structure in the original construction of the two (2) adjoining Residences (as may later be modified pursuant to Article XII) when the portion of the foundation underlying each Residence is joined with that portion underlying the other Residence. The Owners of Residence Lots 49-54; 61-68; 70-77 shall maintain, repair and replace their respective Common Structures in accordance with the terms and conditions set forth in Exhibit "F" to this Declaration.

(C) Townhome Residence Lots 7-47; 55-58; 78-87. **[Townhome Lots]**

(1) In order to preserve a uniform and attractive appearance of the Residences located on Residence Lots 7-47; 55-58; 78-87, as Townhomes or Townhome Residences, the Association shall maintain and repair the exterior walls, roofs, gutters and downspouts, fences and all other exterior improvements affecting the appearance of these Residences and charge the costs and expenses for such maintenance and repair to each of these Residence Lots as part of a Townhomes Cost Centers for said Residence Lots. Such exterior maintenance and repair shall not include the maintenance, repair, replacement or cleaning of glass surfaces or the maintenance of any floor covering within the interior of the decks, balconies or patios, the foregoing being the responsibility of the Owner of the Residence Lot. Such exterior maintenance and repair also shall not impose any obligation on the Association to rebuild or replace any damaged or destroyed Residence, irrespective of the cause thereof, such restoration being provided for above in Section 7.10. In addition, the Association shall have the exclusive right to landscape and maintain such landscaping of all portions of the Residence Lots except those areas within the balconies or patios, if any. If the need for exterior maintenance or repair is caused by an act of a Member or any of his/her agents or guests or members of his/her family member, agent or employee of any Member, whether or not such act is negligent or culpable, then such Member shall pay the cost of such maintenance or repair.

(2) Except as provided above, each Member shall maintain and repair at his/her own cost and expenses his/her Residence and Residence Lot including any Common Area subject to a grant of exclusive use to a Member pursuant to Section 4.05 or licensed to a Member pursuant to Section 4.07, provided that no Member shall make any alteration, repair or addition to his/her Residence or Residence Lot which would affect its exterior appearance or its structure without the prior written approval of the Board, in the manner set forth in Article XII.

(3) If a Member fails to maintain or repair the Residence or other improvements on his/her Residence Lot as set forth in subsection (1) above, the Association may enter into the Lot and perform the necessary maintenance or repairs. If the Association undertakes the maintenance of any Residence or other improvements on a Residence Lot for which a Member is liable hereunder, the Association may recover the cost thereof through a special assessment against the Residence Lot of such Member pursuant to Section 6.03(A)(1) above.

8.04 Maintenance Manual.

(A) Declarant shall furnish the Association with a maintenance manual that shall include a schedule of the reasonable works of maintenance that must be performed by the Association in connection with the maintenance of the Common Area and any Common Facilities. A copy shall also be delivered to the City of Watsonville. The failure of the Association to follow the maintenance schedule in the manual, as well as commonly accepted maintenance obligations, is an affirmative defense pursuant to California Civil Code Section 945.5(c) to any allegation of potential liability on the part of Declarant for alleged defects in the construction or design of the Common Area and Common Facilities. In the event the Association fails to follow the maintenance schedule in the manual, the City of Watsonville shall have the right, but not the obligation, to perform the necessary maintenance and initiate a cost recovery proceeding against the Association.

(B) Declarant shall furnish each initial Owner of a Residence Lot with an owner's maintenance manual that shall include a schedule of the reasonable works of maintenance that must be performed by the Owner in connection with the maintenance of his/her Residence and Residence Lot. Declarant shall also give the Association a copy of this maintenance manual, and, upon request, the Association shall provide any Owner a copy of the same. The failure of any Owner to follow the maintenance schedule in the manual, as well as commonly accepted maintenance obligations, is an affirmative defense pursuant to California Civil Code Section 945.5(c) to any allegation of potential liability on the part of Declarant for alleged defects in the construction or design of such Owner's Residence or Residence Lot. Declarant has instructed each

first purchaser to deliver the maintenance manual to the subsequent purchaser of his/her respective Residence Lot, and subsequent Owners are instructed to deliver the manual to their purchaser.

8.05 Duty to Maintain Landscaping and Irrigation Facilities Located at Santa Catalina San Luis Avenues and the Public Use Trail. The Association shall maintain the landscaping, trees, and irrigation facilities located at Santa Catalina, San Luis Avenues and the public use trail. Maintenance shall include weeding, pruning, and adjustment and replacement of plants, trees, and irrigation facilities.

ARTICLE IX Condemnation

Unless otherwise provided by Section 14.03, if an action for condemnation is proposed or commenced by a governmental body having the right of eminent domain, the following provisions shall apply:

9.01 Residence Lots. If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Development, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly. To that end, the Association, acting as attorney-in-fact for all Members, may amend the Tract Map, any Development Plan, and the Management Documents (as necessary) to eliminate from the Development the Residence Lot so taken. To the extent that any portion of the Common Area is owned in undivided interests by the Members, the foregoing shall include the right of the Association to adjust the undivided interests of the remaining Members in the Common Area based upon the ratio that each remaining Member's undivided interest bears to all the remaining Members' undivided interests in the Common Area.

9.02 Common Area. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by the condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed equally among the Members, subject to the rights of Mortgagees. If necessary, the remaining portion of the Development shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots are not valued separately by the condemning authority or by the court. The Association shall represent the Members in any condemnation proceedings or in negotiations, settlements and agreement with the condemning authority for acquisition of the Common Area, or part of the Common Area.

ARTICLE X Repair Issues and Arbitration; Dispute Resolution

10.01 Actions, Disputes Involving Repair Issues.

(A) **Declarant, Construction Participant, Repair Issues Defined.** For the purposes of Sections 10.01 through 10.04 below, the following parties shall be defined as specified below:

(1) **Declarant.** "Declarant" shall be defined to include Declarant (as defined in Section 1.12 above), as well as Declarant's officers, directors, shareholders, principals, managers, members, partners, agents, employees, trustees, successors and assigns, as the case may be.

(2) **Construction Participant.** "Construction Participant" shall be defined to include any and all contractors, subcontractors, consultants, suppliers, manufacturers, engineers, architects, analysts, designers or other professionals alleged or believed to have been involved, in any way, with the Development, the Real Property or construction or manufacture of any of the improvements located thereon.

(3) **Repair Issue.** “Repair Issue” shall be defined as any deficiency in the construction, design, specifications, surveying, planning, supervision, testing or observation of construction of any portion of the Development, or any other improvements related thereto, under the functionality standards set forth in Section 896, *et seq.* of the California Civil Code.

(B) **Actions, Disputes Involving Repair Issues:** It is the intent of Declarant that the Common Area, Common Facilities, Residences and any other improvements constructed by Declarant in the Development or related thereto be built in a manner consistent with the functionality standards for residential construction set forth in California Civil Code Sections 896, *et seq.* as applicable. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such consistency and compliance, disputes may arise as to whether a defect exists and the party or parties responsible therefor. In the event that the Association or any Member (individually and collectively “Claimant”) claims, contends, or alleges that Declarant or any Construction Participant is responsible for any Repair Issue, such Claimant shall first pursue such claim under the prelitigation nonadversarial procedures set forth in California Civil Code Section 910, *et seq.* For purposes of this Article X, all Common Facilities shall be deemed structures under the definition of “structure” in Section 895(a) of the California Civil Code. Nothing in this Section 10.01 is intended, nor shall be construed as, extending any applicable statute of limitations.

(C) **Repair Issue in Common Area.** If the Repair Issue pertains to the Common Area or any Common Facilities, as defined in Sections 1.10 and 1.11, or if the Repair Issue pertains to any portion of the exterior of a Residence which is the responsibility of the Association to maintain under Section 8.03, above, the Association shall have the right to bring a claim for such Repair Issue.

(D) **Decisions to Initiate Claims.** Notwithstanding any other provision in the Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), Declarant hereby relinquishes control over the Association’s ability to decide whether to initiate any claim against Declarant or any Construction Participant with respect to any Repair Issue in the Common Area or concerning any Common Facilities, or any portion of the exterior of a Residence which is the responsibility of the Association to maintain under Section 8.03. The decision to initiate any such claims for Repair Issues shall, instead, rest with the majority of the Voting Power of the Association other than Declarant.

(E) **Notice.** This shall serve as notice, pursuant to Civil Code Section 912(f), to any potential Claimant that Section 910, *et seq.*, of the Civil Code sets forth standards for prelitigation nonadversarial procedures which must be followed by any potential Claimant. Such procedures impact the legal rights of any potential Claimant. Declarant further notifies such Claimant pursuant to Section 914(a) of the Civil Code that Declarant intends to engage in the nonadversarial dispute resolution procedures set forth in Civil Code Section 910, *et seq.*

(F) **Civil Code Section 6000 Proceedings.** If the Association is a Claimant and pursues an additional action against Declarant or Construction Participant under Section 6000 of the California Civil Code, then all of the requirements of said Section 6000 must be met in addition to the prelitigation nonadversarial procedures in Civil Code Section 910, *et seq.* However, to the extent that the requirements of Section 910, *et seq.* are substantially similar to the requirements of Section 6000, the parties are excused from performing the same pursuant to Civil Code Section 935.

(G) **Service of Claim Notice.** Notice of any Claim against Declarant or Construction Participant, including Civil Code Sections 896 and 897 claims, or requests for information, shall be served on Declarant via certified mail, overnight mail or personal delivery at the following address:

Pacific Sunshine Development
21327 Glen Pl. Apt.2
Cupertino, CA 95014
Attn: Siyan Qin, President

If the notice cannot be served on Declarant at the above-referenced address because Declarant is no longer located at the address and Declarant has not provided the Claimant with an updated address, the Claimant may serve the claim notice on Declarant's agent for service of process under Civil Code Section 912(e) on file with the California Secretary of State's office in Sacramento, California. The current telephone number and website for the Secretary of State's office are (916)653.3984 and www.sos.ca.gov. Written request can be mailed to the California Secretary of State, Special Filing, P.O. Box 942877, Sacramento, California, 94277-0001.

(H) **Notice of Water Intrusion.** Notwithstanding any other provision herein, in the event there is intrusion of water into any Residence, Residence Lot or in any Common Area or Common Facilities (including, without limitation, as a result of any roof, window, siding or other leaks, including plumbing leaks), and whether or not the cause of such water intrusion constitutes a Repair Issue, the Owner of the affected Residence Lot, or the Association in the case of water intrusion in the Common Area or Common Facilities, shall be obligated to immediately notify Declarant and any Construction Participant (as applicable) of such event. In addition, the Owner or Association, as the case may be, shall take all necessary and appropriate action to stop any such water intrusion. Declarant and any Construction Participant (as applicable) shall thereafter have all of the rights specified in Civil Code Section 910, *et seq.* and in this Section 10.01 among other things to inspect the condition, the right to assess the likelihood of mold or mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner and the Association shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant or any Construction Participant to take any action, nor shall any rights of Declarant or any Construction Participant under this subsection (H) constitute an admission or acknowledgment that any causes of water intrusion are the result of defective construction or design. The failure of any Owner or the Association, as the case may be, to timely notify Declarant and any Construction Participant (as applicable) of any such water intrusion shall be cause to deny future claims against Declarant or any Construction Participant relating thereto, which claims could have been mitigated had earlier action been taken.

(I) **No Additional Obligations, Irrevocability and Waiver of Right.** Nothing set forth in this Section 10.01 is intended, nor shall be construed as, extending any applicable statute of limitations, or imposing any obligation on Declarant any Construction Participant to inspect, test, repair or replace any item or address any Repair Issue for which Declarant or such Construction Participant is not otherwise obligated. The right of Declarant and Construction Participant to enter, inspect, test, repair or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing executed and recorded by Declarant in the Official Records of the County.

(J) **Amendment of Section.** This Section 10.01 shall not be amended without the prior written consent of Declarant.

10.02 Repair Issues; Association as Claimant.

(A) **Notice to Members.** If the Association is a Claimant, it must provide written notice to all Members prior to initiation of arbitration (or judicial reference proceeding) against Declarant or any Construction Participant, which notice shall include all of the following:

- (1) **Description.** A description of the Repair Issue.

(2) **Attempts to Address.** A description of the attempts of Declarant or Construction Participant to address such Repair Issue and the opportunities provided to Declarant or such Construction Participant to address such Repair Issue.

(3) **Scope of Work.** A description of the scope of work necessary to address such Repair Issue to the extent known, or an explanation as to why such a description is not obtainable or appropriate.

(4) **Estimated Cost.** The estimated cost to satisfactorily address the Repair Issue to the extent known.

(5) **Board Statement.** An affirmative statement from the Board that the action is in the best interests of the Association and its Members.

(6) **Notice of Meeting.** That a meeting will take place to discuss the matter, and the time and place of such meeting.

(7) **Options to Address.** The options available to address the problems.

(8) **Proposed Contract.** A description of the proposed contract or arrangement between the Association and the attorney retained by the Association to pursue the claim against Declarant or Construction Participant.

(9) **Estimated Legal Expenses.** The estimated attorneys' fees and expert fees and costs necessary to pursue the claim and the source of the funds which will be used to pay such fees and expenses.

(B) **Incurring Legal Expenses by Association.** The Association shall not incur legal expenses, including attorneys' fees, where the Association initiates arbitration (or judicial reference proceeding) or is joined as a plaintiff in legal proceedings, without the affirmative vote or written consent of the majority of the Voting Power of the Association, excluding the voting power of any Member who would be a defendant in such arbitration or proceedings against Declarant or Construction Participants for a Repair Issue. Except as provided in Section 7.05(B) of the Bylaws, the Association must finance any such legal proceeding with monies that are specifically collected for same and may not use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any arbitration described above, a Member must give notice to prospective purchasers of his/her interest in the Development of such arbitration (or judicial reference proceeding) and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with this subsection (B).

(C) **Amendment of Section.** This Section 10.02 shall not be amended without the prior written consent of Declarant.

10.03 REPAIR ISSUES; ARBITRATION.

(A) **SUBMITTAL TO BINDING ARBITRATION. IF: (i) CLAIMANT, DECLARANT AND/OR CONSTRUCTION PARTICIPANT ARE UNABLE TO RESOLVE THE REPAIR ISSUE PURSUANT TO THE PRELITIGATION AND NONADVERSARIAL PROCEDURES IN CIVIL CODE 910, et seq.; (ii) ANY REPAIRS UNDERTAKEN BY DECLARANT OR CONSTRUCTION PARTICIPANT PURSUANT TO CIVIL CODE SECTION 917, et seq., HAVE NOT RESOLVED THE REPAIR ISSUE; (iii) CLAIMANT, DECLARANT OR CONSTRUCTION PARTICIPANT FAILS TO FOLLOW THE PROCEDURES OR TO MEET THE DEADLINES SET FORTH IN CIVIL CODE SECTION 910, et seq.; OR (iv) THE ASSOCIATION, DECLARANT AND CONSTRUCTION PARTICIPANT ARE UNABLE TO RESOLVE THE ASSOCIATION'S REPAIR ISSUE PURSUANT TO THE DISPUTE RESOLUTION PROCEDURES IN CIVIL CODE SECTION 6000 (IF APPLICABLE), THEN THE RESOLUTION OF THE REPAIR ISSUE SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION 10.03.**

(B) JAMS. ALL DISPUTES SUBMITTED TO BINDING ARBITRATION PURSUANT TO THIS DECLARATION SHALL BE DETERMINED BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATE SERVICE, THEN A PARTY MAY PETITION THE SUPERIOR COURT IN SANTA CRUZ COUNTY, CALIFORNIA TO APPOINT EITHER AN ALTERNATE SERVICE OR AN ARBITRATOR, AND SUCH APPOINTMENT BY THE COURT SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF THE ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED. IF THE COURT APPOINTS AN ARBITRATOR INSTEAD OF AN ALTERNATE SERVICE, THE ARBITRATION SHALL BE CONDUCTED UNDER AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1282-1284.2, BUT NOT INCLUDING SECTION 1283.05 AND EXCEPT AS THOSE RULES MAY BE MODIFIED HEREBY.

(C) TIMELINESS. THE ARBITRATION SHALL BE CONDUCTED IN A TIMELY MANNER. THE ARBITRATOR SHALL BE APPOINTED WITHIN SIXTY (60) DAYS FROM THE SUBMITTAL OF THE DISPUTE TO BINDING ARBITRATION. THE ARBITRATION SHALL COMMENCE AS SOON AS POSSIBLE THEREAFTER AND BE CONCLUDED IN A TIMELY MANNER, INCLUDING THE ISSUANCE OF THE ARBITRATOR'S DECISION.

(D) FEDERAL ARBITRATION ACT. THE ASSOCIATION, AND EACH MEMBER BY ACCEPTANCE OF A DEED TO A RESIDENCE LOT, EXPRESSLY AGREE AND ACKNOWLEDGE THAT THIS DECLARATION INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, *et seq.*) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES SHALL BE ARBITRATED – WHICH ARBITRATION SHALL BE MANDATORY AND BINDING – PURSUANT TO THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT (CALIFORNIA CODE OF CIVIL PROCEDURE § 1280, *et seq.*) TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT. TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH THIS ARBITRATION AGREEMENT AND ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THIS ARBITRATION AGREEMENT AND SUCH RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(E) SELF-EXECUTING ARBITRATION AGREEMENT. THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS DECLARATION, OR THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRATABLE ISSUES UNDER THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, WAIVER,

ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW.

(F) PARTIES. THIS ARBITRATION AGREEMENT SHALL INURE TO THE BENEFIT OF, BIND AND BE ENFORCEABLE BY AND AGAINST EACH MEMBER, THE ASSOCIATION, DECLARANT AND CONSTRUCTION PARTICIPANTS.

(G) ATTORNEYS' FEES. EACH PARTY SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS (INCLUDING EXPERT COSTS) FOR THE ARBITRATION.

(H) AUTHORITY OF ARBITRATOR. THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE FOR ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION, INCLUDING COMPENSATORY DAMAGES. THE AWARD OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING, AND SHALL NOT BE SUBJECT TO ANY JUDICIAL OR OTHER REVIEW OR APPEAL. AN APPLICATION TO CONFIRM, VACATE, MODIFY OR CORRECT ANY AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN THE SUPERIOR COURT IN SANTA CRUZ COUNTY, CALIFORNIA.

(I) PARTICIPATION IN JUDICIAL PROCEEDING. THE PARTICIPATION BY ANY PARTY IN ANY JUDICIAL PROCEEDING CONCERNING THIS ARBITRATION AGREEMENT OR ANY MATTER ARBITRATABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY, TO REFUSE TO PARTICIPATE IN, OR TO REFUSE TO ENFORCE ANY ARBITRATION UNDER THIS SECTION 10.03.

(J) FEES AND COSTS OF ARBITRATION. THE FEES AND COSTS TO INITIATE THE ARBITRATION SHALL BE PAID BY DECLARANT OR CONSTRUCTION PARTICIPANT. THE REMAINING FEES AND COSTS SHALL BE PAID AS AGREED BY THE PARTIES. IF THE PARTIES CANNOT REACH AN AGREEMENT, THE FEES AND COSTS OF THE ARBITRATION AND THE ARBITRATOR SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR IN HIS/HER AWARD.

(K) NEUTRAL ARBITRATOR. THE ARBITRATOR APPOINTED TO SERVE SHALL BE A NEUTRAL AND IMPARTIAL INDIVIDUAL. ANY PARTY MAY CHALLENGE THE ARBITRATOR APPOINTED ON THE GROUNDS OF BIAS.

(L) VENUE. THE VENUE OF THE ARBITRATION SHALL BE IN SANTA CRUZ COUNTY, UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

(M) UNENFORCEABILITY OF ANY PROVISION. IF ANY PROVISION OF THIS ARBITRATION AGREEMENT SHALL BE DETERMINED TO BE UNENFORCEABLE OR TO HAVE BEEN WAIVED, THE REMAINING PROVISIONS SHALL BE DEEMED TO BE SEVERABLE THEREFROM AND ENFORCEABLE ACCORDING TO THEIR TERMS.

(N) NOTICE. THE ASSOCIATION, AND EACH MEMBER BY ACCEPTANCE OF A DEED TO A RESIDENCE LOT, AGREE TO HAVE ANY DISPUTE DESCRIBED IN SECTION 10.01 AND 10.02 ABOVE, INCLUDING CLAIMS AGAINST DECLARANT AND/OR CONSTRUCTION PARTICIPANTS, DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL

ARBITRATION ACT, AND THE ASSOCIATION AND SUCH MEMBER ACKNOWLEDGE THAT HE/SHE/IT IS VOLUNTARILY AND KNOWINGLY GIVING UP ANY RIGHT HE/SHE/IT MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL OR OTHER PROCEEDING. THE ASSOCIATION, AND EACH MEMBER BY ACCEPTANCE OF A DEED TO A RESIDENCE LOT, IS GIVING UP HIS/HER/ITS JUDICIAL AND STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF A MEMBER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION: (i) SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT; OR (ii) ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY.

(O) ACTIONS COMBINING COVERED AND OTHER RELATED CLAIMS. IF ANY DISPUTE, ACTION OR CLAIM, INVOLVING ONE OR MORE REPAIR ISSUES, COMBINES CAUSES OF ACTION OR DAMAGES DISTINCT FROM SUCH REPAIR ISSUES, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURIES, CLASS ACTIONS, OTHER STATUTORY REMEDIES, AND FRAUD-BASED CLAIMS, THEN ANY AND ALL SUCH CLAIMS SHALL BE ADMINISTERED ACCORDING TO THE ABOVE PROCEDURES IN THE MANNER SET FORTH IN CIVIL CODE SECTION 931.

(P) JUDICIAL REFERENCE. SOLELY IN THE EVENT THAT THE FOREGOING BINDING ARBITRATION PROVISIONS SHOULD BE CHALLENGED AND HELD NOT TO APPLY OR HELD INVALID, VOID OR UNENFORCEABLE FOR ANY REASON, DECLARANT, THE ASSOCIATION AND EACH MEMBER AGREE THAT:

(1) ANY CLAIM AS SET FORTH ABOVE, SHALL THEREAFTER BE HEARD BY A REFEREE IN A JUDICIAL REFERENCE PROCEEDING PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 THROUGH 645.2, AND/OR ANY SUCCESSOR AND/OR COMPANION STATUTE(S), AND THIS GENERAL REFERENCE AGREEMENT IS INTENDED TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH SECTION 638.

(2) UPON THE FILING OF A COMPLAINT GIVING RISE TO SUCH A REFERENCE PROCEEDING, THE PARTIES SHALL ENDEAVOR TO AGREE UPON A RETIRED SUPERIOR COURT JUDGE OR COURT OF APPEALS JUSTICE FROM THE THEN CURRENT PANEL OF RETIRED JUDGES ASSOCIATED WITH JAMS, OR SUCH OTHER COMPARABLE JUDICIAL DISPUTE RESOLUTION SERVICE AS APPROVED BY THE PARTIES, WHICH RETIRED JUDGES ARE AVAILABLE TO SERVE AS REFEREES IN THE COUNTY OF VENUE (VENUE SHALL BE IN SANTA CRUZ COUNTY, CALIFORNIA, UNLESS THE PARTIES AGREE TO SOME OTHER LOCATION). IF THE PARTIES ARE UNABLE TO AGREE UPON A PERSON TO SERVE AS REFEREE WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF SUCH COMPLAINT, OR IF THE PERSON SELECTED BY THE PARTIES AS REFEREE IS NOT AVAILABLE OR WILLING TO SERVE AND THE PARTIES CANNOT AGREE ON AN ALTERNATE WITHIN FIFTEEN (15) DAYS AFTER BEING NOTIFIED OF SUCH REFEREE'S UNAVAILABILITY OR UNWILLINGNESS TO SERVE, THEN ANY PARTY MAY FILE A PETITION WITH THE COURT TO HAVE A REFEREE APPOINTED PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638- 640.

(3) THE PARTIES SHALL ADVANCE, IN EQUAL SHARES, THE FEES AND EXPENSES OF THE REFEREE SELECTED PURSUANT TO THIS

SECTION; PROVIDED, HOWEVER, THAT THE LOSING PARTY OR PARTIES IN ANY SUCH REFERENCE PROCEEDING MAY, IN ADDITION TO PAYING ANY JUDGMENT AWARDED BY THE REFEREE, BE ORDERED TO REIMBURSE THE PREVAILING PARTY OR PARTIES FOR ANY AND ALL FEES AND EXPENSES INCURRED IN CONNECTION WITH THE REFERENCE PROCEEDING. JUDGMENT UPON THE AWARD RENDERED BY THE REFEREE MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF, AND SHALL BE BINDING UPON ALL PARTIES, THEIR SUCCESSORS AND ASSIGNS.

(4) THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE, IN GOOD FAITH, TO ENSURE THAT ALL NECESSARY AND APPROPRIATE PARTIES ARE INCLUDED IN THE REFERENCE PROCEEDING, AND THE PARTIES SHALL PERFORM, IN GOOD FAITH, SUCH ACTS AS MAY BE REASONABLY NECESSARY TO PROMPTLY COMMENCE THE REFERENCE PROCEEDING BEFORE THE REFEREE AND OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE OR CONTROVERSY IN ACCORDANCE WITH THE TERMS HEREOF. THE REFERENCE PROCEEDING SHALL COMMENCE ON A DATE AGREED TO BY THE PARTIES, AND IF THE PARTIES CANNOT AGREE, THEN ON A DATE DETERMINED BY THE REFEREE.

(5) THE PARTIES SHALL BE ENTITLED TO DISCOVERY AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY MAKE AND ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS A TRIAL JUDGE IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA. THE PARTIES MAY PURSUE ALL FORMS OF DISCOVERY AVAILABLE IN THE SUPERIOR COURTS OF THE STATE OF CALIFORNIA, INCLUDING, WITHOUT LIMITATION, SITE INSPECTIONS, INTERROGATORIES, DEPOSITIONS, ADMISSIONS REQUESTS AND DOCUMENT REQUESTS.

(6) THE SELECTED OR APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE ACTION OR PROCEEDING, WHETHER OF FACT OR OF LAW, AND SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES, INCLUDING COMPENSATORY DAMAGES. THE REFEREE SHALL NOT HAVE THE POWER TO AWARD PUNITIVE, SPECIAL AND/OR CONSEQUENTIAL DAMAGES.

(7) THE REFEREE SHALL CONDUCT NEUTRAL AND IMPARTIAL PROCEEDINGS IN ACCORDANCE WITH THE APPLICABLE RULES OF JAMS OR SUCH OTHER JUDICIAL DISPUTE RESOLUTION PROVIDER, AS SELECTED BY THE PARTIES.

(8) NO ACTION OF ANY PARTY IN CONNECTION WITH THE REFERENCE PROCEEDING SHALL BE DEEMED TO BE A WAIVER OF THE ATTORNEY/CLIENT PRIVILEGE OR THE WORK/PRODUCT DOCTRINE.

(9) THE ASSOCIATION AND EACH MEMBER BY ACCEPTANCE OF A DEED TO A RESIDENCE LOT, ACKNOWLEDGE THAT, PURSUANT TO THE ABOVE JUDICIAL REFERENCE PROVISIONS, HE/SHE/IT VOLUNTARILY AND KNOWINGLY WAIVES AND COVENANTS NOT TO ASSERT HIS/HER/ITS CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING BUT NOT LIMITED TO CLAIMS AGAINST DECLARANT AND/OR CONSTRUCTION PARTICIPANTS RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR FAILURE TO DISCLOSE MATERIAL FACTS, AND COVENANTS AND AGREES THAT THIS WAIVER OF JURY TRIAL SHALL BE BINDING UPON HIS/HER/ITS SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE

ACTING ON BEHALF OF ANY MEMBER, THE ASSOCIATION, OR THEIR SUCCESSORS AND ASSIGNS.

(10) IF ANY PART OF THIS SUB-SECTION (R) CONFLICTS OR IS INCONSISTENT WITH THE JUDICIAL REFERENCE STATUTE (CODE OF CIVIL PROCEDURE SECTIONS 638 – 645.2), THEN THE JUDICIAL REFERENCE STATUTE SHALL CONTROL.

(Q) AMENDMENT OF SECTION. THIS SECTION 10.03 SHALL NOT BE AMENDED WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT.

10.04 Recovery of Monetary Damages. If the Association or any Member recovers monetary damages from any party pursuant to the foregoing, the Association or Member shall first apply such funds to repair any defect that has resulted in the award of such damage (reasonable costs and attorneys' fees excepted). Included in the foregoing shall be the ability of the Association to fund reserves for the purpose of repairing the defect that has resulted in such award. If the Association has excess funds remaining after repair of such any defect by the Association, such funds shall be paid into the Association's reserve account.

This Section 10.04 shall not be amended without the prior written consent of Declarant.

10.05 Dispute Resolution.

(A) Except as otherwise set forth below, in any dispute between the Association and a Member involving their rights, duties and liabilities under the Management Documents or any other matters referred to in Civil Code Section 5900, *et seq.*, the parties shall attempt to resolve the dispute pursuant to those Internal Dispute Resolution Procedures, either provided by the Association pursuant to Civil Code Section 5910, *et seq.*, or as otherwise set forth in Civil Code Section 5915, *et seq.*, as applicable.

(B) Neither the Association nor any Member shall file an enforcement action (as defined in Civil Code Section 5925(b)) unless the parties have attempted to resolve the dispute in the manner provided in subsection (A) above, as applicable. If not so resolved (or if Civil Code Section 5900 is inapplicable) the parties shall have endeavored to submit their dispute to alternative dispute resolution pursuant to Civil Code Section 5925, *et seq.*, as applicable, prior to filing an enforcement action.

The provisions of this Section 10.05 shall not be applicable to any claims or actions against Declarant or Construction Participant or claims or actions to which it is a party relating to Repair Issues, as that term is defined in Section 10.01(A)(3), all of which shall be governed exclusively by Sections 10.01 to 10.04 of this Article X.

ARTICLE XI

General Provisions; Reports to Prospective Purchasers

11.01 Interpretation: Inconsistency. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Development for the mutual benefit of all Members. If the provisions of this Declaration conflict with any of the provisions of the other Management Documents, the provisions of this Declaration shall control.

11.02 Severability. The provisions herein shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any of these provisions shall not affect the validity of the remaining provisions.

11.03 Enforcement; Waiver.

(A) Except as otherwise provided in this Declaration, the Association or any Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and reservations imposed by this Declaration. Failure by the Association, or by any Member, to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

(B) The City of Watsonville shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, those provisions in this Declaration which relate to the maintenance of the Common Area or Common Facilities set forth in Sections 4.03(A), 4.03(A)(6), 4.13, 4.15, 5.02(Q), 8.03, 8.06, 12.01, 12.05 and this Section 11.03 (B). The City shall also have the right, but not the obligation, to enforce all laws and ordinances of the State of California and/or the City of Watsonville on the private streets, alleys and parking areas within the Development.

11.04 Binding on Successors. This Declaration shall be binding upon, and shall inure to the benefit of, the successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees, sublessees, contract purchasers, guests and assignees of the Members.

11.05 Attorneys' Fees. Except as otherwise provided herein, in any action arising from rights and obligations established under this Declaration, including but not limited to actions for damages resulting from a breach of this Declaration or actions for specific enforcement hereof, the prevailing party shall be entitled to recover such a reasonable sum as the court, arbitrator, referee or other decision-maker may fix as attorneys' fees and costs.

11.06 Breaches: Effect on Liens. A breach of any of the provisions of this Declaration will not render invalid or otherwise affect the lien of any Mortgage or deed of trust.

11.07 Additional Covenants in Favor of the United States Department of Veterans Affairs ("VA"). In the event Phase 1A is submitted to the VA for approval, then while the Declarant controls one-fourth (1/4) or more of the Voting Power of the Association, such approval also shall include (A) any annexation or de-annexation of the Real Property subject to this Declaration, and (B) any merger or consolidation of the Association. The foregoing shall be in addition to these covenants in favor of the VA as set forth herein.

11.08 Reports to Prospective Purchasers.

(A) In accordance with California Civil Code Section 912(h), Declarant has delivered to the first purchaser of a Residence Lot certain documents in conjunction with the original sale including the following and has instructed the first purchaser to retain such documents and provide copies to his/her subsequent purchaser:

- (1) Civil Code Section 912(b): All maintenance and preventative maintenance, recommendations (including the Maintenance Manual described in Section 8.04(B));
- (2) Civil Code Section 912(c): All manufactured products maintenance, preventative maintenance, and limited warranty information;
- (3) Civil Code Section 912(d): All of Declarant's limited contractual warranties in effect at the time of the original sale;
- (4) Civil Code Section 912(e): Declarant's agent for notice/service of process; and
- (5) Civil Code Section 912(g): Sections 895-945.5 of the Civil Code ("SB800").

The original purchaser shall instruct the subsequent purchaser to retain such documents and provide copies to the next purchaser of the Residence Lot.

The original purchaser also shall provide all plans, specifications, available engineering calculations and reports pertaining to the Residence Lot or Development as described in greater detail in Civil Code Section 912(a) if obtained by the purchaser pursuant to Civil Code Section 912(a).

(B) In accordance with California Civil Code Section 4525, the Member shall, as soon as practicable before transfer of title to his/her Residence Lot or execution of a real property sales contract therefor, (as defined in California Civil Code Section 2985,) provide the

following to the prospective purchaser. (This section does not apply to an Owner that is subject to the requirements of Section 11018.6 of the Business and Professions Code):

- (1) **Management Documents.** A copy of the Management Documents;
- (2) **Annual Budget Report; Annual Policy Statement.** A copy of the Annual Budget Report and Annual Policy Statement described in Civil Code Section 5300 and 5310, respectively, and in Article VII, Sections 7.03 and 7.04(B) of the Bylaws;
- (3) **Certificate of Financial Information.** A true statement signed by an authorized representative of the Association as to the amount of the Association's current general and special assessments and fees, as well as any assessments levied upon the Member's Residence Lot which are unpaid on the date of the statement, and any monetary fines or penalties levied on the Member's Residence Lot and unpaid on the date of the statement. The certificate shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a Lien upon the Member's Residence Lot as set forth in California Civil Code Section 5650.
- (4) **Assessment Changes.** Any change in the Association's current general and special assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided.
- (5) **Notice of Alleged Violations.** A copy or summary of any notice previously sent to the Member pursuant to Civil Code Section 5855 that sets forth any alleged violation of the Management Documents that remains unresolved. The notice shall not be deemed a waiver of the Association's right to enforce the Management Documents against the Member or the prospective purchaser of the Residence Lot with respect to any violation.
- (6) **Minutes of Board Meeting.** If requested by the prospective purchaser, a copy of the minutes of Board meetings, excluding meetings held in executive session, conducted over the previous twelve (12) months that were approved by the Board.
- (7) **Notice of Civil Code Section 6000 Proceedings.** In the event the Association has notified Declarant or Construction Participant of a claim asserted by the Association against Declarant or Construction Participant for defects in the design or construction of the Development pursuant to Civil Code Section 6000:
 - (a) **Preliminary List of Defects.** A copy of the preliminary list of defects shall be provided to each Member pursuant to Civil Code Section 6000. Disclosure of the preliminary list of defects pursuant to this subsection (7) shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.
 - (b) **Settlement Information.** If the Association and Declarant and Construction Participants have entered into a settlement agreement or otherwise agreed to resolve the matter, and the Association has complied with Civil Code Section 6100, then a copy of the latest information required pursuant to Civil Code Section 6100, as amended, shall be provided to each Member.

ARTICLE XII

Architectural Control

12.01 Architectural Restrictions. Except for construction of improvements by Declarant, including those improvements made by Declarant as optional improvements to the Residences or Residence Lots, if any, no building, fence, wall or other structure shall be erected or maintained on or within the Development, and no structural alterations, or exterior additions or changes, to the Residences or Residence Lots, including, but not limited to, solar heating systems, air conditioners, landscaping, stonework, concrete work, paint, awnings, patio covers, mechanical, plumbing or electrical facilities (including any plumbing, electrical or other work which would result in the penetration of the finished surfaces of the ceilings, wall or floors), shall be made until complete

plans and specifications showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing by the Board. Without limitation upon the foregoing, the Board shall evaluate the impact which such improvements may have on the Common Area and other Residence Lots in the Development and the harmony of design and location of such improvements in relation to surrounding structure, landscaping and topography of the Development. Subject to Sections 12.07 and 12.10 below and the provisions of Civil Code Section 4760 and 4765, the Board shall approve or disapprove such Plans and Specifications at a duly constituted meeting within forty-five (45) calendar days after all of said Plans and Specifications requested by the Board have been submitted to it. If the Board fails to do so, such approval will not be required, and the Member proposing such items shall be deemed to have fully complied with this Section.

12.02 No Waiver. The approval by the Board of any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval of the Board under this Declaration shall not be deemed to be or constitute a waiver of any right to withhold approval as to any similar plan, specification or matter whenever submitted for approval. In addition, the Board's failure to act shall not be deemed to be or constitute a waiver of any right to review subsequent plans and specifications within the purview of the Board.

12.03 Disclaimer of Liability. The Board, and any member thereof, shall not be liable to any Member for any damage, loss or prejudice suffered or claimed on account of:

- (A) The approval or disapproval of Plans and Specifications, whether or not defective;
- (B) The construction or performance of any work, whether or not pursuant to approved Plans and Specifications; or
- (C) Damage to the Residence Lot or any property within the Development.
- (D) The development or manner of development of any property within the Development; provided, however, that the Board and such member have acted in good faith.

12.04 Variances. Where circumstances, such as topography, location or property lines, location of trees, or other matters require, the Board may allow reasonable variances as to any of the covenants, conditions or restrictions contained in the Management Documents of the Board on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Development. Such variances shall not waive the right of the Board to require strict adherence to this Declaration in all other circumstances.

12.05 No Right to Modify. Each Member acknowledges and understands that he or she has absolutely no right or ability to modify the exterior or any structural elements of his/her Residence Lot in any manner, unless otherwise provided by the Board. **Additions to the Residences or other construction which expands the original footprint of the Residences are prohibited.**

12.06 Building Guidelines. The Board may, from time to time, and in its sole discretion, adopt, amend and repeal rules and regulations to be known as "Building Guidelines" that interpret or implement the provisions of this Declaration with respect to construction or alteration of improvements. Such building guidelines shall be consistent with the requirements of Civil Code Section 4765. The Building Guidelines among other things shall interpret and implement the provisions hereof by setting forth guidelines for architectural design of improvements, placement of improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Development; provided, however, that said Building Guidelines shall not detract from or conflict with the standards required by this Declaration. The Building Guidelines may also include such other limitations and restrictions as the Board shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alternation to or the maintenance of any building, structure, wall or fence,

including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location, or other improvements of any kind. In the event of any inconsistency between this Article XII, on the one hand, and the Building Guidelines, if any, on the other hand, for former shall control.

12.07 Compliance. With respect to compliance with the architectural controls of this Declaration, the following rules shall apply in addition to those set forth elsewhere in this Declaration:

(A) If approved, the Member may proceed to construct the improvements at his/her cost, and shall hold the Association and the other Members harmless from all liability arising out of any injury or damage to any persons or property occurring in, on or about the Residence Lots or Common Areas herein described.

(B) All improvements approved or deemed approved under this Article XII shall be completed within six (6) months after such approval, unless extended by the Board upon request of the Member.

(C) The exterior color of any improvement cannot be changed from that existing on the date of this Declaration without the consent of the Board.

(D) Any duly authorized agent of the Board may at any reasonable time enter and inspect any Residence Lot and those portions of an improvement covered by this Declaration, if the Board believes that a violation of any part of this Declaration is occurring or has occurred.

(E) All improvements shall conform to and be constructed in accordance with all applicable governmental regulations, including zoning ordinances of the City of Watsonville, and they must be constructed within the Residence Lot.

12.08 Appointment of Architectural Committee. The Board shall have the right to delegate its review and approval rights under this Article XII to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of three (3) members. One (1) alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee. The members of any Architectural Committee appointed to the Board shall receive no compensation for services rendered other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board

12.09 Interpretation. All questions of interpretation or construction of any of the terms or conditions of this Article XII shall be resolved to the Board, and its decision shall be final, binding and conclusive on all of the parties affected. In the event an Architectural Committee is appointed by the Board pursuant to Section 12.08 and the Architectural Committee disapproves any Plans and Specifications submitted by a Member pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request for approval not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed an approval of the appeal.

12.10 Mechanics' Liens. No Member may cause or permit any mechanic's lien to be filed against Common Area, Common Facilities, or another Member's Residence Lot for labor or materials alleged to have been furnished or delivered to the Member. Any Member who permits a mechanics' lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Member from the Board. If the Member fails to remove such mechanics' lien, the Board may

discharge the lien and levy a Special Assessment against the violating Member's Residence Lot to recover the cost of discharge pursuant to Section 6.03(A)(1) above.

12.11 Enforcement. Subject to the provisions of Section 10.05 above, upon any violation of the architectural control provisions of this Declaration, the Building Guidelines then in effect or the conditions of any building permit or of any approval given by the Board or the Architectural Committee, the Board may enforce the provisions of this Declaration, the Building Guidelines and such other applicable conditions of approval by any proceeding at law or in equity and may utilize either or both of the following remedies in addition to such other recourse as is provided in this Declaration:

(A) The Board may restore the affected Residence Lot to its state existing immediately prior to such violation, and the Owner of the Residence Lot shall reimburse the Association for all expenses incurred by it in exercising its rights and obligations under this subsection (A). Such amounts may be assessed to the Residence Lot as a special assessment pursuant to Section 6.03(A)(1) above.

(B) The Board may notify the Member to restore the affected Residence Lot to its state existing immediately prior to the violation, and provide the Member reasonable time in which to do so. If the Member fails to comply with the request within the provided time period or any authorized extension, the Association may impose a fine pursuant to the Bylaws in an amount not to exceed Fifty Dollars (\$50.00) per day per violation as such sum may be adjusted annually for inflation in accordance with the Consumer Price Index or comparable index after the recording of this Declaration, and such penalty may be collected as a special assessment pursuant to Section 6.03(A)(3).

(C) Failure of the Board to require a Member to correct a violation of this Declaration upon first discovery by the Board shall not be deemed a waiver of the Board's rights to require correction of such violation at a later time or to make corrections of all existing violations a precondition to the Board's approval of other matters requested by a Member.

12.12 Assessment. In the event the square footage of the Residence increases in an amount that is greater than ten percent (10%) of the square footage originally associated with such Residence as a result of the construction of such improvements as provided above, the general assessment apportioned against the Residence Lot pursuant to Section 6.02(E) shall likewise increase. The increase in assessments shall be in proportion to the ratio that the increase in the square footage of the Residence as a result of the construction of the improvements bears to the square footage of the Residence as originally constructed.

ARTICLE XIII **Duration and Amendment**

13.01 Term. The provisions contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until fifty (50) years from the date hereof, after which time this Declaration shall be deemed automatically extended for successive periods of twenty-one (21) years, unless an instrument executed by a majority of the Voting Power of the Association shall be recorded, canceling and terminating this Declaration.

13.02 Amendment. Subject to the provisions of Sections 14.06(D) and 14.06(E), this Declaration may be amended or repealed in whole or part as to all or any part of the Development as follows:

(A) If, at the time all of the Development is owned solely by Declarant, the Declaration may be amended or repealed by Declarant alone.

(B) After the sale of the first Residence Lot, and unless otherwise provided in Section 1.35(F), the Declaration may be amended or repealed by the affirmative vote of a majority of the Voting Power of the Association, which includes a majority of the Voting Power of the Association other than Declarant; provided, however, that where the two (2) class voting structure

is still in effect pursuant to Section 1.28, the affirmative vote or written consent of a majority of each class of membership shall be required to amend or repeal the Declaration. Any vote of the Members regarding any amendment or repeal of this Declaration shall be conducted in accordance with the procedures set forth in the Rules Governing Elections adopted by the Association pursuant to Section 4.03 of the Bylaws (or if not so adopted, pursuant to Civil Code Sections 5100 – 5145).

(C) It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Development in general, meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage or trust deed encumbering a Residence Lot in the Development by Freddie Mac, Fannie Mae, FHA and the VA. In furtherance of that intent, Declarant expressly reserves the right and shall be entitled, by unilateral amendment of the Declaration, as long as Declarant owns more than twenty-five percent (25%) of the Residence Lots in the Development to incorporate any provisions that are, in the opinion of any of the cited entities or governmental agencies, required to conform the Management Documents to the requirements of such entities and governmental agencies. Any such provision shall first have been reviewed by the California Department of Real Estate as applicable. Each Owner of a Residence Lot and each secured lender, by accepting a mortgage or deed of trust or encumbrances of a Residence Lot in the Development, consents to the incorporation in this Declaration of any such provision and to the execution of any such amendment and agrees to be bound to the provisions thereof as if they were incorporated in this Declaration. The Board and each Owner shall take any action and shall adopt any resolutions required by Declarant or any beneficiary to conform this Declaration or the Development to the requirements of any of such entities or agencies.

(D) The amendment must be in writing. Pursuant to Civil Code Section 4270, as amended, attached or appended to the amendment shall be the written certification of the President of the Association that such writing contains the amendment to the Declaration and that such amendment was approved by the percentage of the votes of the Members required by the Declaration. Such amendment shall then be recorded in the office of the Recorder of Santa Cruz County, California.

(E) Notwithstanding the foregoing, the voting power required to amend a specific provision of the Declaration shall not be less than the percentage of affirmative votes required for action to be taken under that provision; and while Declarant controls one-fourth (1/4) or more of the Voting Power of the Association, no amendment or termination of this Declaration shall be valid without the prior consent of the California Real Estate Commissioner, if required under applicable law.

(F) Until such time as the real property to be included in Phase 1B, Phase 1C, Phase 2 or Phase 3 has been annexed to the Real Property then subject to this Declaration in the manner set forth in Section 2.02 above, no amendment of this Declaration modifying the rights of Declarant to annex such Real Property can be adopted unless such modification is also consented to in writing by Declarant.

(G) In addition to those Sections requiring the approval of Declarant to amend, the prior written consent of Declarant shall also be required to amend the following Sections of this Declaration: 5.03, 6.02(E), 7.02, 7.04, 7.06, 7.10, 8.01, 8.03, and 13.02.

(H) In addition to the foregoing, the prior written consent of the City Manager of the City of Watsonville shall be required to amend Sections 4.03(A), 4.03(A)(6), 4.13, 4.15, 5.02(Q), 8.03, 8.06, 10.02, 12.01, 12.05, 13.01 and this Section 13.02(H). A written copy of the proposed amendment, setting forth the precise language included in the amendment, shall be delivered to the City Clerk of the City of Watsonville along with a transmittal letter explaining the proposed change and the reason for the change. The City Manager or their designee shall have an opportunity to review and comment on the proposed amendment for a period of not less than sixty (60) days from the date of receipt of the amendment by the City Clerk. The amendment shall be deemed approved by the City on the date it is signed by the City Manager or their designee, or if

not signed, at the end of such sixty (60) day period. The amendment shall not be deemed effective should the City Manager or their designee disapprove of it within said sixty (60) day period.

ARTICLE XIV ***Protection of Mortgagees***

14.01 Provisions Controlling. This Article shall pertain to and be for the benefit of all First Mortgagees encumbering the Residence Lots and shall supersede inconsistent provisions herein. Nothing in this Article XIV is intended to violate any law of the State of California or regulations of any applicable administrative agency of the State or federal government.

14.02 Insurance; Supplement to Article VII. Those Sections of Article VII (Insurance; Destruction of Improvements) set forth below are herein modified to include the following:

(A) **Section 7.06 – Property Insurance.** If any portion of the Development is located within a special flood hazard as shown on a flood insurance rate map, the Association shall purchase and maintain a policy of flood insurance improvements to such property, including those in the Common Area and Residence Lots, in an amount not less than the lesser of:

(1) One hundred percent (100%) of the insurable value of the Improvements; or

(2) The maximum coverage available under the appropriate National Flood Insurance Administration program.

(B) **Section 7.08(A) - Other Insurance Coverage.** In addition to the requirements set forth in this Section, the Association shall purchase and maintain fidelity bonds or insurance, which shall be in an annual amount not less than the sum of three (3) months' assessments on all Residence Lots in the Development, plus the Association's reserve funds containing an endorsement of coverage for all Officers, Directors, employees and agents of the Association and all other persons, whether compensated or not, handling or responsible for funds belonging to, or administered by, the Association. Such bonds or insurance shall include a provision that calls for ten (10) – day written notice to the Association before the bond or insurance can be canceled or substantially modified for any reason.

(C) **Section 7.08– Board Appointed Attorney-in-Fact.** In addition to the powers enumerated in this Section, the Board is also authorized as attorney-in-fact for all Members for the purpose of purchasing and maintaining the insurance required under this Article XIV, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

14.03 Condemnation; Supplement to Article IX. Article IX shall be supplemented and superseded by the following:

(A) **Board Appointed Attorney-in-Fact.** The Board is hereby appointed as attorney-in-fact for all Members to represent the Members in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or a portion of the Development.

(B) **Sale by Consent.** If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then upon the written consent of those Members and those First Mortgagees referenced in Section 14.06(E) below, the Development, or a portion of it, may be sold and conveyed to the condemning authority by the Board, acting as attorney-in-fact for the Members, pursuant to subsection (A) above, for a price deemed fair and equitable by the Board. If the requisite number of Members or First Mortgagees does not consent to a sale of all or a portion of the Development and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation awards.

(C) **Distribution of Sale Proceeds or Condemnation Award.**

(1) Upon a total taking of the Development, including a total taking by formal condemnation proceedings or a sale in lieu of condemnation:

(a) That renders more than fifty percent (50%) of the Residence Lots uninhabitable (such determination to be made by the Board); or

(b) That renders the Development, as a whole, uneconomic as determined by the vote or written consent of those Members and those First Mortgagees referenced in Section 14.06(E) below, the right of any Member to partition through legal action, pursuant to Section 14.04 below, shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to a partition action, shall be paid to the Association, all Members and to their respective First Mortgagees as their interests appear in the proportion that the fair market value of the Common Area and/or each Residence Lot bears to the fair market value of all Residence Lots and Common Area in the Development. The fair market value of Residence Lots and Common Area shall be determined as set forth below.

(2) Upon a partial sale or taking of the Development, meaning a sale in lieu of condemnation or a taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(a) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the court to be paid from the amount awarded; then

(b) To Members and to their respective First Mortgagees, as their interest may appear, of Residence Lots in the Development whose Lots have been sold or taken, an amount equal to the fair market value of each such Residence Lot as determined below, less such Members' share of the above expenses (which share shall be in proportion that the fair market value of all Residence Lots the Development sold or taken in such proceeding). After such payment, the recipient shall no longer be deemed a Member, and the Association, acting as attorney-in-fact of all Members, shall amend the Development Plan, Tract Map, and Management Documents (as necessary) to eliminate from the Development the Residence Lots so sold or taken.

(c) To the Association, to the extent any portion of the Common Area has been sold or taken, an amount equal to the fair market value of such Common Area as determined below. All proceeds paid to the Association shall be distributed by the Association to the remaining Members and to their respective First Mortgagees as their interests may appear, in proportion to the ratio that the fair market value of each remaining Residence Lot bears to the fair market value of all remaining Residence Lots as determined below.

(d) To each remaining Member and to his/her First Mortgagees, as his/her interests may appear, whose Residence Lot has been diminished in fair market value as a result of the sale or taking disproportionate to any diminution in fair market value of all Residence Lots, as determined below, but as of a date immediately after any announcement of condemnation, in an amount up to the total diminution in value; then

(e) To all remaining Members and to their respective First Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Member's Residence Lot bears to the fair market value of all remaining Members' Residence Lots, as determined below.

(D) **Determination of Fair Market Value.** Wherever, in this Section 14.03 reference is made to a determination of the fair market value of one or more Residence Lots, it shall mean the fair market value of each such Residence Lot (including its interest in the Common

Area as Member of the Association) as of a date immediately prior to any announcement of condemnation as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each such Residence Lot. The cost of such appraisal shall be paid from the sale proceeds.

14.04 Partition; Supplement to Section 4.10.

(A) Except as provided herein or in Section 4.10, 7.10(E), 14.03, and 14.06, an Owner shall have no right to partition or divide the Property or any portion thereof. Nothing in this Declaration shall prevent partition of a co-tenancy in a Residence Lot.

(B) **Distribution of Proceeds.** Proceeds of property resulting from a partition shall be distributed to and among the respective Members and their First Mortgagees, as their interests may appear, in proportion to the ratio that the fair market value of each respective Residence Lot bears to the fair market value of all Members' Residence Lots determined as provided in Section 14.03 above, but as of a date immediately prior to the event giving rise to the right of Members to partition the Property or any portion thereof.

(C) **Power of Attorney.** Each of the Members hereby irrevocably appoints the Board as attorney-in-fact, and irrevocably grants to the Board full power in the name and stead of such Member, to sell the entire Development, or portion thereof, and to execute deeds and conveyances thereto, in one or more transactions, for the benefit of all Members and under the circumstances authorizing partition under this Declaration. Said power of attorney shall: (1) be binding upon all Members; (2) be exercisable by a majority of the Board, acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of a majority of the Voting Power of the Association and those First Mortgagees referenced in Section 14.06(D); and (3) be exercisable only after recordation with the County recorder of a certificate, executed by those who have power to exercise the power of attorney, that the power of attorney is properly exercisable under the terms of this Declaration, which certificate shall be conclusive evidence of proper exercise in favor of any person relying thereon in good faith.

14.05 Distribution of Insurance and Condemnation Proceeds; Supplement to Section 7.10; Supplement to Article IX. No Member or any other party shall have priority over any right of the First Mortgagee of his/her Residence Lot pursuant to its Mortgage in case of a distribution to the Member of insurance proceeds or condemnation awards for losses to or a taking of the Residence Lot or Common Area. Any provisions to the contrary in the Management Documents are, to such extent, void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected First Mortgagees naming the Mortgagees, as their interests may appear.

14.06 Rights of First Mortgagees and Rights of Guarantors of a Mortgage.

(A) Each First Mortgagee and the guarantor of the mortgage on any Residence Lot in the Development shall be given timely written notice of:

(1) Any condemnation of casualty loss that affects either a material portion of the Development or the Residence Lot securing its mortgage;

(2) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Residence Lot on which it holds the mortgage;

(3) A lapse, cancellation, or material modification of any insurance policy maintained by the homeowners' association; and

(4) Any proposed action that requires the consent of a specified percentage of mortgagees.

(B) A First Mortgagee who obtains title to a Residence Lot pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Lot's unpaid regularly budgeted assessments or charges accrued before the acquisition of title to the Lot by the First Mortgagee. If the Association's lien priority includes costs of collecting the unpaid assessments, the lender will be liable for any fees or costs related to the collection of the unpaid assessments.

(C) No provision in this Declaration shall give a Member or any other party priority over the rights of the First Mortgagee of the Residence Lot pursuant to its mortgage in the case of payment to the Member of insurance proceeds or condemnation awards for losses to or taking a Residence Lot and/or Common Facilities.

(D) Subject to the provisions of Section 13.02(B), any amendment to this Declaration of a material nature to Mortgagees must also be agreed to by First Mortgagees that represent at least 51% of the votes of Residence Lots that are subject to First Mortgages. For purposes hereof, such amendments are those that provide for, govern or regulate any of the following:

- (1) Voting rights;
- (2) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens;
- (3) Reductions in reserves for maintenance, repair and replacement of Common Area or improvements thereon;
- (4) Hazard or fidelity insurance requirements;
- (5) Reallocation of interests in the Common Area or rights to use the Common area;
- (6) Responsibility for maintenance and repair of Residence Lots, Common Area and the improvements thereon;
- (7) Expansion or contraction of the Development or the addition, annexation or withdrawal of real property to or from the Development;
- (8) Redefinition of boundaries of any Residence Lot;
- (9) The convertibility of Residence Lots into Common Area or Common Area into Residence Lots;
- (10) The leasing of Residence Lots;
- (11) Imposition of any right of first refusal or similar restriction on the right of a Member to sell, transfer or otherwise convey his/her Residence Lot;
- (12) Restoration or repair of the Development, after a partial condemnation or damage due to an insurable hazard which is not in accordance with this Declaration and the original plans and specifications;
- (13) Any provisions which are for the express benefit of Mortgagees, insurers or guarantors.

Implied approval is assumed when a First Mortgagee fails to submit a response to any written proposal for an amendment within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(E) Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs or for other reasons must be agreed to by at least two-thirds (2/3rds) of the Voting Power of the Association and by First Mortgagees that represent at least 51% of the votes of the Residence Lots that are subject to First Mortgages.

14.07 Board Appointed Attorney-in-Fact; United States Department of Veterans Affairs. The delegation of the power of attorney set forth in this Article XIV, Sections 14.02(C), 14.03(A), and 14.04(C) shall not apply to the Secretary, United States Department of Veterans Affairs.

IN WITNESS WHEREOF, the foregoing instrument was subscribed the day and year first above written.

Pacific Sunshine Development, LLC,
A California Limited Liability Company

By: _____

Siyan Qin, Authorized Representative

[illegible]

Attachment 1
Page 67 of 83

Exhibit "A"

LEGAL DESCRIPTION OF REAL PROPERTY (PHASE 1A)

Lots 55-58, inclusive and Lots 59 and 60; as per map recorded on October 4, 2017, in Volume 127 of Maps, page 9 Official Records, Santa Cruz County, California.

Exhibit "B"

Delivery of Documents to Members; Association.

4035. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated in the annual policy statement, prepared pursuant to Section 5310, to receive documents on behalf of the association. If no person has been designated to receive documents, the document shall be delivered to the president or secretary of the association.

(b) A document delivered pursuant to this section may be delivered by any of the following methods:

(1) By e-mail, facsimile, or other electronic means, if the association has assented to that method of delivery.

(2) By personal delivery, if the association has assented to that method of delivery. If the association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

4040. (a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

(b) Upon receipt of a request by a member, pursuant to Section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with Section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710.

(c) For the purposes of this section, an unrecorded provision of the governing documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

4045. (a) If a provision of this act requires "general delivery" or "general notice," the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to Section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

Exhibit "B"

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to Section 5310.

4050. (a) This section governs the delivery of a document pursuant to this act.

(b) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.

(c) If a document is delivered by electronic means, delivery is complete at the time of transmission.

4055. If the association or a member has consented to receive information by electronic delivery, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Exhibit “C”

LEGAL DESCRIPTION OF PHASE 1B

Lots 1-6, inclusive and Common Area Lots A, B, and Lot K (including Lily Lane) as per map recorded on October 4, 2017, in Volume 127 of Maps, page 9 Official Records, Santa Cruz County, California.

Exhibit “D”

Exhibit “D”

LEGAL DESCRIPTION OF REAL PROPERTY (PHASE 1C)(PHASE 2)(PHASE 3)

LEGAL DESCRIPTION OF PHASE 1C

Lots 7-28, inclusive, and Common Area Lots H; D (San Nicholas Lane); and J (Rose Lane) as per map recorded on October 4, 2017, in Volume 127 of Maps, page 9 Official Records, Santa Cruz County, California.

LEGAL DESCRIPTION OF PHASE 2

Lots 29-47, inclusive and Lots 48-54, inclusive and Common Area Lot E (Santa Barbara Lane) as per map recorded on October 4, 2017, in Volume 127 of Maps, page 9 Official Records, Santa Cruz County, California.

LEGAL DESCRIPTION OF PHASE 3

Lots 61-87, inclusive, and Common Area Lots C and G, F (Lilac Lane); and L (Peony Lane a 24' wide private street) as per map recorded on October 4, 2017, in Volume 127 of Maps, page 9 Official Records, Santa Cruz County, California.

Exhibit “E”

**SAMPLE FORM OF BUYER’S OCCUPANCY AND RESALE AGREEMENT
WITH OPTION TO PURCHASE**

CITY OF WATSONVILLE INCLUSIONARY HOUSING PROGRAM

[TO BE PROVIDED BY CITY]

Exhibit “F”

MAINTENANCE REPAIR AND USE OF COMMON STRUCTURE RESIDENCES

The following shall be applicable to the maintenance, repair and use of Common Structures applicable to Residence Lots 49-54; 61-68; 70-77, that are duplex structures, pursuant to Section 8.03(B) of the Declaration.

1. Maintenance, Repair, Replacement. To the extent not inconsistent with the provisions of this Section, the general rules of law respecting party walls shall apply regarding Common Structures and liability for damage due to negligence or willful acts or omissions. In addition, the following shall be applicable:

(a) The Owners of each of Residence Lots 49-54; 61-68; and 70-77 shall have the right and obligation to repair, maintain, and replace those portions of the Common Structures affecting his or her Residence. The cost of reasonable repair, maintenance and replacement shall be shared by the Owners in accordance with subsection (b) below; provided that each Owner shall be solely responsible to maintain, repair and replace (i) the interior surfaces of the Common Structures within such Owner's Residence, (ii) any plumbing or other utilities which serve only the Owner's Residence regardless of whether the plumbing or utilities are located within the Common Structures, (iii) any damage caused to the Common Structures by such Owner or the occupants, guests or invitees of his or her Residence, and (iv) any damage to Common Structures which clearly affects only one Residence as determined by a licensed roofer or contractor, as appropriate, for the repair or replacement of the roof, foundation or wall.

Each of the adjoining Owners of Residence Lots 49-54; 61-68; and 70-77 shall have equal rights to the use of a party wall as defined in Section 8.03(B), except that each shall have the exclusive right to the use of the interior surface of the wall on his side. Neither Owner shall use any portion of the wall so as to interfere with the use and enjoyment of the other Owner.

If the cost of the repair, maintenance or replacement respecting a Common Structure is to be shared by the Owners pursuant to subparagraph (b), the Owner initiating same shall (i) provide the other Owner at least fifteen (15) days written notice of such intended maintenance, repair and replacement and the estimated cost thereof as set forth in a bid for the work, and (ii) provide the other Owner with an opportunity to obtain separate bids for the work to be performed. Unless both Owners agree, the licensed contractor with the lowest bid shall be used for the work.

In the event of an emergency situation, an Owner may effect the repair or maintenance (but not a replacement) of a Common Structure without the notice and bid requirements of this subsection. For purposes hereof, an emergency situation is defined as a situation requiring immediate repair or maintenance of a Common Structure necessary to protect either Residence from further harm or damage.

(b) Except as otherwise provided herein, the cost of maintenance, repair, replacement or reconstruction of a Common Structure shall be allocated as follows:

[i] In the event the entire roof or foundation needs to be maintained, repaired, replaced or reconstructed, the cost thereof shall be allocated between both Owners upon the basis of the ratio of the square footage of the portion of the roof or foundation which covers, underlies or is incident to a Residence to the total square footage of the roof or foundation covering, underlying or is incident to both Residences.

[ii] In the event a portion of the roof or foundation needs to be maintained, repaired, replaced or reconstructed, the cost thereof shall be allocated between both Owners upon the basis of the ratio of the square footage of the portion of the roof or foundation covering, underlying, or incident to a Residence which needs to be maintained, repaired, replaced or reconstructed to the total square footage of the roof or foundation covering,

underlying , or incident to both Residences which needs to be maintained, repaired, replaced or reconstructed.

[iii] The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) The provisions of Section 12.02 of the Declaration notwithstanding, an Owner shall not paint the exterior of his or her Residence in a manner that differs from the original color scheme of the Residence unless the other Owner and the Association's Board of Directors approves the change in color, and the exteriors of both Residences are repainted at the same time and in the same color. An Owner shall repaint the exterior of his or her Residence if it is in disrepair or if painting is necessary to maintain the Residence in good condition. Each Owner shall bear the cost of repainting his respective Residence.

An Owner shall not replace any portion of the roof of his or her Residence with other than the original roofing material unless the other Owner and the Board approve the change in roof material, and the entire common roof system applicable to both Residences is replaced at the same time and with the same materials. The cost of replacing the common roof system shall be allocated in accordance with subsection (b) above.

(d) If a Common Structure is destroyed or damaged by fire or other casualty, the Owners shall contribute to the cost of restoring it in the manner provided in subsection (b) above; provided that an Owner shall not be prevented from requiring a larger contribution from the other Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions as provided above.

(e) If one or both Residences is (are) damaged or destroyed, such Residence(s), including any damaged or destroyed landscaping, the Owners shall at their respective expenses (1) immediately take such actions as may be required to secure any hazardous conditions resulting from the damage or destruction, and (2) repair and reconstruct in accordance with the original plans and specifications (as may have been modified pursuant to Article XII of the Declaration), modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or as authorized by the Board. The cost of repair and reconstruction shall be allocated among and paid by the Owners as their interests appear but in a manner consistent with the provisions of this Exhibit "F" including but not limited to sub-sections (b) and (d) above. Unless otherwise extended in writing by the Board, the repair or reconstruction shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one (1) year after such date.

(f) Each Owner shall at all times keep and maintain any roof drainage systems serving his Residence, including but not limited to downspouts and rain gutters, in good condition and free from all debris. No Owner shall remove or modify such drainage in such a manner which increases the flow of water to the adjoining attached Residence or its Lot.

(g) In addition and subject to the foregoing, each Owner shall, at his or her sole cost and expense, maintain and repair his/her Lot and all structural improvements therein, (including but not limited to heating system, appliances, plumbing system, electrical system, and fixtures) and all landscaping thereon, keeping the same in good condition. In addition, each Owner shall have structural improvements on his Lot periodically inspected for termites, and if warranted, immediately shall take appropriate corrective measures therefor.

2. Easements. The Owner of each Lot shall have an easement appurtenant to each such Lot over, under, upon and across the adjoining Lot for purposes of providing;

[i] Access, only to the extent necessary, for maintenance, repair and reconstruction of the Owner's Residence including any Common Structures; and

[ii] support of the Common Structures.

The Owner of each Lot shall have an easement appurtenant to each such Lot, over the portion of the roof on the adjoining Lot for the flow of water across and along such roof area.

3. Enforcement. Except as provided below or in the Declaration, in the event of a dispute between Owners of attached Residences and/or the Association arising in connection with the Common Structure or the provisions of this Declaration, each party shall have the right to enforce by any proceeding at law or in equity against the other party all covenants imposed by this Declaration. In connection with any such action, each party shall be entitled to recover such party's attorney's fees and costs as so ordered by the court. Prior to commencement of any such action, written notice of the violation shall be given to the defaulting party. Failure of any party to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so at any time thereafter. The foregoing notwithstanding, prior to initiating the prosecution of any such action, the parties shall comply with the provisions of Section 10.05 of the Declaration as applicable.

Except as otherwise provided in this Declaration, the terms and conditions set forth in the Declaration shall remain applicable to Lots 49-54; 61-68;70-77.

4. Insurance. In addition to the requirements set forth in Section 7.06(B)(1) of the Declaration, a certificate of insurance evidencing the insurance policy with the endorsement required in subsection 7.06(B)(1), shall be delivered by each Owner to the Owner of the adjoining Residence on an annual basis. Each Owner shall provide to the Owner of the adjoining Residence written notice of cancellation or reduction of coverage amount of the insurance policy required pursuant to this subsection, not less than thirty (30) days prior to the effective date of cancellation or reduction of coverage amount of the policy.

5. Mechanics Liens. An Owner of a Residence shall not permit to be placed against the adjoining Owner's Lot, any mechanics', materialmen's, contractor' or subcontractors' liens arising out of the work of any maintenance, repair, replacement, restoration of Common Structures, or any other claim or demand. Each Owner shall pay or cause to be paid all said liens, claims or demands before any action is brought to enforce the same against the adjoining Owner's Lot. Each Owner agrees to indemnify, protect, defend and hold the other Owner and the other Owner's Lot free and harmless from all liability for any and all such liens, claims and demands together with reasonable attorney's fees and all reasonable costs and expenses incurred.

6. Association's Maintenance, Repair, Etc.; Lien. If an Owner of either Residence Lot fails to maintain, repair or reconstruct the landscaping, Common Structures, or structural improvements on his or her Lot as above set forth, the Association may enter onto the Lot and perform the necessary maintenance, repairs or reconstruction.

If the Association undertakes the rebuilding, repair, maintenance, or replacement of any Common Structures structural improvements or landscaping on a Residence Lot for which an Owner is liable hereunder, the Association may recover the cost thereof through a special assessment against the Owner pursuant to Section 6.03(A)(1) of the Declaration.

7. General. The easements, covenants, conditions and restrictions contained herein are for the benefit of each of Lots 49-58;61-68;70-77 in the manner set forth above, and as such, shall be covenants appurtenant to and running with each such Lot and binding on the successive Owners thereof or any portion thereof.

Exhibit “G”

OMITTED

Exhibit “F”

Exhibit “H”

RETAINING WALLS – ASSOCIATION MAINTAINS

TO BE ADDED

Exhibit “I”

RETAINING WALLS – OWNERS MAINTAIN

TO BE ADDED

Exhibit “__”

Exhibit “J”

TO BE ADDED IN FINAL VERSION

**SQUARE FOOTAGES OF RESIDENCES
ALLOCATION OF COST CENTER BUDGET PER PHASES**

<u>Phase 1A</u>	<u>Unit Size</u>	<u>Percentage of Cost Center Allocation</u>
Lot 55	_____	_____
Lot 56	_____	_____
Lot 57	_____	_____
Lot 58	_____	_____
	1,445	
	1,451	
	2,154	

<u>Phase 1C</u>	<u>Unit Size</u>	<u>Percentage of Cost Center Allocation</u>
Lot 7	_____	_____
Lot 8	_____	_____
Lot 9	_____	_____
Lot 10	_____	_____
Lot 11	_____	_____
Lot 12	_____	_____
Lot 13	_____	_____
Lot 14	_____	_____
Lot 15	_____	_____
Lot 16	_____	_____
Lot 17	_____	_____
Lot 18	_____	_____
Lot 19	_____	_____
Lot 20	_____	_____
Lot 21	_____	_____
Lot 22	_____	_____
Lot 23	_____	_____
Lot 24	_____	_____
Lot 25	_____	_____
Lot 26	_____	_____
Lot 27	_____	_____
Lot 28	_____	_____
	1,398	
	1,404	
	1,440	
	1,445	
	1,451	
	2,154	
	2,159	

<u>Phase 2</u>	<u>Unit Size</u>	<u>Percentage of Cost Center Allocation</u>
Lot 29	_____	_____
Lot 30	_____	_____
Lot 31	_____	_____
Lot 32	_____	_____
Lot 33	_____	_____
Lot 34	_____	_____
Lot 35	_____	_____
Lot 36	_____	_____
Lot 37	_____	_____
Lot 38	_____	_____
Lot 39	_____	_____
Lot 40	_____	_____
Lot 41	_____	_____
Lot 42	_____	_____
Lot 43	_____	_____
Lot 44	_____	_____
Lot 45	_____	_____
Lot 46	_____	_____
Lot 47	_____	_____

1,398

1,404

1,440

1,445

1,451

1,950

2,148

2,154

2,159

2,770

Exhibit “K”

A variable width easement for private underground utility lines over a portion of Lots 49,51,53,55, and 57, respectively, set forth in Sections 4.03(A)(2)(b), (A) (3)(b), and (A)(4)(b) above and described as: “2” Electric Conduit and Telephone & Cable TV Conduits.”